REGULAR MEETING
BOARD OF ADJUSTMENT
EILEEN DONDERO FOLEY COUNCIL CHAMBERS
MUNICIPAL COMPLEX, 1 JUNKINS AVENUE
PORTSMOUTH, NEW HAMPSHIRE

Members of the public also have the option to join the meeting over Zoom
*(See below for more details)**

7:00 P.M. **September 19, 2023**

AGENDA

PLEASE NOTE: ITEMS (III.) D. THROUGH F. WILL BE HEARD AT THE SEPTEMBER 26, 2023 BOARD OF ADJUSMENT MEETING.

I. APPROVAL OF MINUTES

A. Approval of the August 15, 2023 minutes.

B. Approval of the August 22, 2023 minutes

II. OLD BUSINESS

A. REQUEST TO POSTPONE The request of **Kathryn Waldwick** and **Bryn Waldwick (Owners),** for property located at **30 Parker Street** whereas relief is needed to demolish and remove the existing shed and covered porch and construct a new attached shed with a covered porch which requires the following: 1) Variance from section 10.521 to permit a) 45% building coverage where 35% is allowed, b) one and a half (1.5) foot right side yard where 10 feet is required, and c) two (2) foot rear yard where 20 feet is required; and 2) Variance from Section 10.321 to allow a nonconforming structure or building to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is located on Assessor Map 126 Lot 27 and lies within the General Residence C (GRC) District. **REQUEST TO POSTPONE** (LU-23-117)

B. The request of **Cynthia Austin Smith** and **Peter Smith (Owners)**, for property located at **9 Kent Street** whereas relief is needed to demolish the existing two (2) living unit structure and construct a one (1) living unit structure which requires a Variance from Section 10.521 to allow a) 5,000 square feet of lot area where 7,500 square feet are required and b) 5,000 square feet of lot area per dwelling unit where 7,500 square feet

are required. Said property is located on Assessor Map 113 Lot 42 and lies within the General Residence A (GRA) District. (LU-23-119) *This item was continued from the August 22, 2023 meeting to request more information from the applicant.*

C. The request of **Caleb E. Ginsberg** and **Samantha L. Ginsberg (Owners)**, for property located at **303 Bartlett Street** whereas relief is needed to demolish the existing detached garage and construct an addition with attached garage which requires a Variance from Section 10.521 to allow a) seven (7) foot left yard where ten (10) feet is required; b) a two (2) foot right yard where ten (10) feet is required; c) building coverage of 27.5% where 25% is allowed; and 2) Variance from Section 10.321 to allow a nonconforming structure or building to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is located on Assessor Map 162 Lot 13 and lies within the General Residence A (GRA) District. (LU-23-120)

III. NEW BUSINESS – PUBLIC HEARING

A. The request of **J & J's Drop** and **Drive LLC (Owner),** for property located at **459 Islington Street** whereas relief is needed to install a 54 square foot mural which requires the following: 1) Variance from Section 10.1251.10 to allow 54 square feet of aggregate sign area where 48.5 is allowed; and 2) Variance from Section 10.1251.20 to allow 54 square feet of individual sign area where 16 square feet is allowed. Said property is located on Assessor Map 157 Lot 7 and lies within the Character District 4-L2 (CD4-L2) and Historic District. (LU-23-129)

B. The request of **Wayne G. Clough (Owner)** and **Sophary Sar (Applicant),** for property located at **100 Islington Street Unit 6** whereas relief is needed to allow an esthetician business which requires a special exception from Section 10.440, Use # 7.20 where it is permitted by Special Exception. Said property is located on Assessor Map 137 Lot 25-6 and lies within the Character District 4-L2 (CD4-L2) and Historic District. (LU-23-122)

C. The request of **Davenport Inn LLC (Owner)**, for property located at **70 Court Street** whereas relief is needed for the following: 1) An after-the-fact Variance from Section 10.515.14 for six (6) existing permitted mechanical units with a setback of 0.5 feet from the property line; 2) Variance from Section 10.515.14 to install a seventh mechanical unit with a setback of 0.5 feet from the property line whereas 10 feet is required; and, in the alternative; 3) Equitable Waiver from Section 10.515.14 for the installation of six mechanical units with a 0.5 side yard setback. Said property is located on Assessor Map 116 Lot 49 and lies within the Character District 4-L1 (CD4-L1) and Historic District. (LU-22-10)

THE FOLLOWING ITEMS WILL BE HEARD ON TUESDAY, SEPTEMBER 26, 2023

D. The request of **Marcella F. Hoekstra (Owner),** for property located at **35 Whipple Court** whereas relief is needed in the form of an equitable waiver for 1) an accessory structure with an 8.5-foot right yard where 10 feet was permitted and an 8-foot rear yard where 17 feet was permitted; or in the alternative 2.a) Variance from Section 10.521 to allow an 8,324 SF lot area/dwelling unit where 15,000 SF is required; b) to allow a frontage of 45.83 feet where 100 feet is required; c) to allow an accessory structure with an 8.5 foot right yard where 10 feet is required; d) to allow an accessory structure with an 8 foot rear yard where 9 feet is required; and e) to allow a building coverage of 26% where 20% is allowed. Said property is located on Assessor Map 260 Lot 98 and lies within the Single Residence B (SRB) District. (LU-23-147)

E. The request of **Lawrence Brewer (Owner),** for property located at **253 Broad Street** whereas relief is needed to construct an attached garage and add a second driveway, which requires the following: 1) Variance from Section 10.521 to allow a 7 foot side setback where 10 feet is required; and 2) Variance from Section 10.1114.31to allow more than one driveway per lot. Said property is located on Assessor Map 131 Lot 16 and lies within the General Residence A (GRA) District (LU-23-148)

F. The request of **Prospect North (Owner),** for property located at **815 Lafayette Road** whereas relief is needed for the demolition of the existing building and tower and the construction of three 4-story, 24-unit multi-family buildings (72 total units) with first floor parking and associated site improvements, which requires the following: 1) Variance from Section 10.5B33.20 (Front Build-out) to permit a front build out of less than 50% of the total front yard width; and 2) Variance from Section 10.5B33.30 (Façade Orientation) to permit a façade orientation that is not parallel with the front property line. Said property is located on Assessor Map 245 Lot 3 and lies within the Gateway Corridor (G1) District and the FEMA 100yr flood and extended flood hazard area. (LU-23-149)

IV. OTHER BUSINESS

V. ADJOURNMENT

**Members of the public also have the option to join this meeting over Zoom, a unique meeting ID and password will be provided once you register. To register, click on the link below or copy and paste this into your web browser:*

https://us06web.zoom.us/webinar/register/WN_p8JV1_-OTmGIkGQ7Fa8qNA

MINUTES OF THE
BOARD OF ADJUSTMENT MEETING
EILEEN DONDERO FOLEY COUNCIL CHAMBERS
MUNICIPAL COMPLEX, 1 JUNKINS AVENUE
PORTSMOUTH, NEW HAMPSHIRE

7:00 P.M. **August 15, 2023**

MEMBERS PRESENT:	Phyllis Eldridge, Chair; Beth Margeson, Vice Chair; Members David Rheaume; Paul Mannle; Thomas Rossi; Jeffrey Mattson; Jody Record, Alternate
MEMBERS EXCUSED:	ML Geffert, Alternate
ALSO PRESENT:	Stefanie Casella, Planning Department

Chair Eldridge called the meeting to order at 7:00 p.m. Alternate Ms. Record took a voting seat for the entire meeting. Chair Eldridge noted the petitions that would be heard at the August 22 meeting.

*Mr. Mannle moved to **suspend** the rules in order to address the request for postponement for New Business, Petition F, 30 Parker Street. Ms. Record seconded. The motion **passed** unanimously, 7-0.*

*Mr. Mannle moved to **postpone** Petition F, 30 Parker Street, to the September 6 meeting, seconded by Mr. Rossi. The motion **passed** unanimously, 7-0.*

I. APPROVAL OF MINUTES

A. Approval of the July 18, 2023 minutes.

Vice-Chair Margeson abstained from the vote*. Mr. Mannle moved to **approve** the July 18 minutes, seconded by Mr. Rossi.*

Mr. Rheaume noted a few corrections: 1) the vote on page one to appoint a temporary chair and vice-chair should have been 5-0 because Mr. Rossi abstained from the vote. 2) The second Roman numeral I should have been II.

*The minutes were **approved** as amended by unanimous vote, 6-0.*

B. Approval of the July 25, 2023 minutes.

*Mr. Mannle moved to **approve** the July 25 minutes as presented, seconded by Mr. Rossi. The motion **passed** unanimously, 7-0.*

II. OLD BUSINESS

A. Ashley Dickenson & Elyse Hambacher – 125 Elwyn Avenue request a 1-year extension to the variances granted on November 16, 2021. (LU-21-172)

*Mr. Mannle moved to **grant** the extension for one year. Vice-Chair Margeson seconded and noted that it would be extended to November 16, 2024.*

Mr. Rheaume said he would approve the motion but said the Board had to be careful about making automatic extensions now that the impacts of Covid-19 were over. It was further discussed. [Timestamp 9:02]

*The motion **passed** unanimously, 7-0.*

III. NEW BUSINESS – PUBLIC HEARING

A. The request of **Alexandra Scott** and **Scott Scott (Owners),** for property located at **271 Sagamore Avenue** whereas relief is needed to demolish the existing detached garage and construct an addition with attached garage which requires the following: 1) Variance from section 10.521 to allow a) 0.5 foot (6 inch) right yard where 10 feet is required; and b) 28% building coverage where 25% is maximum. Said property is located on Assessor Map 221 Lot 15 and lies within the General Residence A (GRA) District. (LU-23-103)

SPEAKING TO THE PETITION

Designer Amy Dutton was present on behalf of the applicant; the owners Scott and Alexandra Scott were also present. Ms. Dutton reviewed the petition and criteria.

Mr. Rheaume asked what took place to adjust the property line toward the neighboring property. Mr. Scott said the survey for the house to the right was done prior to its demolition and after the construction, another survey was done that changed the property line between that house and his house. Mr. Rheaume said there was nothing in the application that reflected what the actual property line was, and he said the applicant was abutting very closely to the set property line. Mr. Scott said the garage was practically on the property line before the survey was done. Mr. Rheaume said his main concern was expanding the current garage to 25-26 feet in height so that it would be right along a property line that also had issues. He asked why that extra height was needed and why the applicant didn't feel that it did not have a negative impact on the neighbor's property. Ms. Dutton said the lot was very narrow and going vertical was the solution for getting more square footage. She said the neighbor supported the project. Mr. Rheaume asked if there was a plan to reuse any of the current garage's foundation. Mr. Scott said it wasn't really a foundation but was crushed stone. Mr. Rheaume said an office was mentioned for the proposed second floor of the garage but a future bedroom over the garage was also listed but there was an office on the second

floor. Ms. Dutton said the space over the garage would be an office. She explained that the office by the back staircase was for the girls to do their homework. Mr. Scott said it was just an elongated hallway leading to the attic and that the hallway space wouldn't really be used. Mr. Rheaume asked what the front portion of the proposed space was intended for. Mr. Scott said it would be a bathroom and playroom. Mr. Mattson said if the proposed mudroom were removed and the garage was a direct addition, it would still be within the 10-ft setback and closer to conforming. Ms. Dutton said they considered it but the rooflines felt massive.

Chair Eldridge opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

No one spoke, and Chair Eldridge closed the public hearing.

DECISION OF THE BOARD

*Mr. Rossi moved to **grant** the variance for the project as presented and advertised, seconded by Mr. Mannle.*

Mr. Rossi said it is within the public interest to support and grow the housing stock suitable for families in Portsmouth, so granting the variance would not be contrary to the public interest. He said it would do substantial justice because there would be no loss to the public by allowing the project to proceed. He said it would not diminish the values of surrounding properties, noting that there were no objections from the abutters. He said the applicant was creating a little extra room behind the house for the properties on Broad Street and overall would enhance the values of the surrounding properties. Regarding the unnecessary hardship, he said granting the variance would not alter the essential character of the neighborhood because the houses adjacent to the applicant's home were of similar massing to what was proposed and the design would be in keeping with the renovated homes on Sagamore Avenue. Mr. Mannle concurred and said it looked like the houses on either side of the applicant's house had generous renovations done, so it would be in keeping with the character of the neighborhood.

Mr. Rheaume said he would not support the motion because what was asked for from a massing standpoint would severely extend the nature of the construction along that side of the property. He said the abutters may be okay with it but the Board's job wasn't to justify things by who felt okay by what. He said it came down to the criteria and he could not see a unique hardship with the property. He said the variance request would impose on light and air by creating a very large new addition right up against the property line that would change the character of the neighborhood. Chair Eldridge said she would support the motion because the ask was small. It was further discussed. [Timestamp 31:10]

*The motion **passed** by a vote of 5-2, with Vice-Chair Margeson and Mr. Rheaume voting in opposition.*

Mr. Rheaume recused himself from the following petition.

B. The request of **Tanner Family Revocable Trust (Owners),** for property located at **380 Greenleaf Avenue** whereas relief is needed to construct a detached garage which requires a Variance from Section 10.571 to allow an accessory structure to be located closer to a street than the principal building. Said property is located on Assessor Map 243 Lot 63 and lies within the Single Residence B (SRB) District and FEMA 100yr flood & Extended flood hazard area. (LU-23-62)

SPEAKING TO THE PETITION

The applicant Allison Tanner was present and reviewed the petition and criteria. She noted that the proposed garage would allow the reduction of the impervious area and would be farther away from the wetland and not noticeable to most people except for one neighbor.

Mr. Rossi said the variance request was to get the location of the garage closer to the road than the house, so since the wetlands buffer encompassed both the front and back yards, he asked how that affected the placement and why those conditions mitigated toward putting the garage in front of the house instead of behind it. Ms. Tanner said there was a retention pond, and in order to put the driveway further toward the back, they would disturb more of the buffer. She said they still had to come down the full length of the driveway and drive that much farther to get to the back of the house. Mr. Rossi said there would be a big increase in the impervious surface within the buffer. Ms. Tanner said it would still be 400 x 400 but they would put in crushed stone to make the rest of that distance. She noted that it was well treed and had lots of planting beds.

Chair Eldridge opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

No one spoke, and Chair Eldridge closed the public hearing.

DECISION OF THE BOARD

*Mr. Mannle moved to **grant** the variance for the petition as presented, with the following **condition**:*

1. *That the approval is conditional on the Planning Board's granting of the Wetland Conditional Use Permit.*

The motion was seconded by Mr. Mattson.

Mr. Mannle said the hardship was in the zoning itself. He said granting the variance would not be contrary to the public interest because the public had no interest in a garage behind a grove of trees across a wetland. He said it would observe the spirit of the ordinance. He said it would do substantial justice because the large lot with a house on it already existed, and to change the location of the garage to meet the criteria of the ordinance would involve a much longer driveway and possibly the cutting down of one or two trees. He said it would not diminish the values of

surrounding properties because the lot was very large and the entire building envelope was in the wetlands buffer. Mr. Mattson concurred. He said the variance would not alter the essential character of the neighborhood, and aside from the actual wetland and wetland buffer making the property unique, the structure was set so far back that the 30-ft rear yard setback would make it difficult to place the accessory structure anywhere else. He said it would be barely visible from the street, so it would not be contrary to the public interest and would be consistent with the intent of the ordinance.

*The motion **passed** unanimously, 6-0.*

Mr. Rheaume resumed his voting seat.

C. The request of **Carl Douglas Overn** and **Tatiana Overn (Owners),** for property located at **40 Wilson Road** whereas relief is needed to **c**onstruct a sunroom and deck expansion at the rear of the property which requires the following: 1) Variance from Section 10.521 to allow an eight (8) foot rear yard where 30 feet are required; and 2) Variance from Section 10.321 to allow a nonconforming structure or building to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is located on Assessor Map 251 Lot 57 and lies within the Single Residence B (SRB) District. (LU-23-114)

SPEAKING TO THE PETITION

The applicants Carl and Tatiana Overn were present to review the petition and criteria.

Mr. Rossi asked if the distance of eight feet from the sunroom to the property line was measured from the center of the sunroom. He also asked about the corner. Mr. Overn said he measured from the closest point. Mr. Rossi said the line was in the wrong place then and that it should be eight feet from that corner. Mr. Overn agreed.

Chair Eldridge opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

No one spoke, and Chair Eldridge closed the public hearing.

DECISION OF THE BOARD

*Mr. Rossi moved to **grant** the variances for the petition as presented and advertised, seconded by Mr. Rheaume.*

Mr. Rossi said granting the variances would not be contrary to the public interest because there was no public interest in micromanaging the configuration of the backyard, and the proposed addition did not affect the public interest. He said granting the variances would do substantial justice because there would be no loss to the public that would outweigh the loss to the property owner if the

variances were to be denied. He said it would not diminish the values of surrounding properties because he thought that tidying up the backyard would make the area more enticing and pleasant and would enhance the values of surrounding properties that had sightlines into the applicant's backyard. He said the unnecessary hardship was the special condition of the property; the house was oriented on the property in a diagonal, so the distance to the property line as one got to the edges of the building would be a little off because of that diagonal nature. He said due to that special condition of the property, the setback requirements didn't need to be strictly adhered to. Mr. Rheaume concurred. He said the applicant seemed to be asking for a fair amount of relief, eight feet where 30 is required, but the SRB District was intended to have a lot of room between properties, and he thought that was being adhered to here. He said the neighboring backyards, the cluster of trees, and open area in the middle of the block created a sense that closest to the property line wasn't nearly as problematic as it might appear to be. He said the applicant met the hardship requirement because the minor extension of the existing narrow oddly shaped room was an acceptable use for the property. Vice-Chair Margeson said she would support the motion but that the application gave her pause because eight feet from the rear yard setback seemed a significant ask. However, she said there were special considerations due to the lot's configuration.

*The motion **passed** unanimously, 7-0.*

D. The request of **Go-Lo Inc. c/o Labrie (Owner),** for property located at **2059 Lafayette Road** whereas relief is needed to demolish the existing structure and construct a two-story residential building containing 16 living units which requires the following: 1) Variance from Section 10.1113.20 to allow parking to be located in front of the principal building; 2) Variance from Section 10.533 to allow a structure to be located 58 feet from the centerline of Lafayette Roads where 80 feet is required; 3) Variance from Section 10.521 to allow 1,715 square feet of lot area per dwelling unit where 7,500 square feet is required; and 4) Variance from Section 10.440 Use #1.53 to allow 16 units where eight (8) are permitted. Said property is located on Assessor Map 268 Lot 13 and lies within the Mixed Residential (MRB) District. (LU-23-116)

SPEAKING TO THE PETITION

Attorney Derek Durbin was present on behalf of the applicant, along with the owners/applicants the Labries, the architect Mark Gianinny, and the project engineer Eric Weinrieb. Attorney Durbin reviewed the petition, noting that the owner wanted to merge the two existing lots. He said the property was unique because it was zoned MRB and no other properties near it shared that designation. He said it was more economically feasible to demolish the building. He said the 750-sf units would let the applicants offer affordable housing to their employees. He reviewed the criteria in detail. [Timestamp 58:23]

Mr. Rossi said he thought 16 units was a big ask but found it intriguing that the stated intent of the project was to create housing for employees of the Labries' businesses. He said Portsmouth was in severe need of workforce housing and it was one of the City's objectives to increase the stock

within the community. He asked if the applicant would be amenable to a stipulation that the project meet the criteria for workforce housing as outlined in Ordinance RSA 674.58. Attorney Durbin said it would require four of the 16 units to be restricted to the 20 percent threshold. Ms. Casella agreed. Mr. Rossi said it would be a longer term solution to workforce housing difficulties. Attorney Durbin said the Gateway District had developer incentives to create workforce housing and to deed restrict properties but that it didn't apply to his clients because they couldn't take advantage of those incentives. He said statutory criteria had to be met with deed restrictions, which didn't allow much flexibility for the applicant. Mr. Rossi said a variance for 16 units would be an incentive.

Mr. Mannle said the term "workforce housing" as used by the applicant was a misnomer because it was really personnel housing. Attorney Durbin said he had been careful not to use that phrase because the owners didn't want to be restricted in that sense. He said it was really a request for 16 units. He said the units would be rented housing that would be made available to the employees at a reasonable rate. Mr. Mannle said the zoning table indicated that 5-8 units were allowed in the MRB District. He said the applicants had two lots, and he asked if the 5-8 units would get knocked down per the density of the lot. Ms. Casella said the applicant had to abide by the lot area per dwelling unit. Mr. Mannle said if the applicant was only allowed three units if the two lots were merged and that therefore it was more of a density issue than the number of dwelling units. Chair Eldridge said the housing would be suitable for the Labries' employees but wasn't solely for them. Attorney Durbin said the intent was to first offer the units to the employees, and anything that remained would be marketed to the public. One of the owners, Michael Labrie, said the intent was to have 16 units available to rent to the public. He said the project was designed such that the market rates would be lower than larger units, so he felt they were helping the situation with employees in the City-defined housing. He said it was nothing that they intended to restrict and reserve for their employees but it was really to create additional inventory for the community.

Vice-Chair Margeson said the MRB designations surrounded that sea of SRB and so on and made it tough to discern what the spirit and intent of the ordinance is. She asked what special conditions of the property made it impossible or close to impossible not to use it as an MRB. Attorney Durbin said the special conditions that made it less feasible to make certain uses of a property also made it more conducive to other uses of the property. In this case, he said the special conditions were the size of the two lots and the surrounding context of the area, which was residential but really characterized by the Westerly project cross Hoover Drive. He said the zoning was antiquated for those properties and he felt it was used for the mixed-use lower level commercial/residential use that never changed because it didn't have to. He said everything around it had morphed into a different zoning and different uses, which were special conditions.

Project engineer Eric Weinrieb said some of the special conditions was the way the lot was developed for the free-for-all access along Route One and the cars backing up. He said it they tried to redevelop the property, they would have to make it more conforming and limit the parking spaces in front, and people driving by would see no cars and think the property was empty. He said by keeping the office use, they would be handcuffed to that access and parking in front, which he thought was a special condition of the site. He said that was why they wanted to move the building forward. He said they also wanted to eliminate the driveway to create a safer access. He pointed out that there was also a multi-purpose path that would be affected.

Vice-Chair Margeson said she thought the 16 units were a bit of an ask but felt that the project was well thought out. Mr. Rheaume asked what the benefit to the project was by parking in the secondary front yard because there was parking under the building. Mr. Weinrieb said the underneath parking was resident parking but a visitor wouldn't be able to park there, so they provided three visitor spaces and a handicap space outside. He said they also did not want to encumber Hoover Drive with additional parking. He said there were opportunities to move in the back but they would be using up a lot of the green space. Mr. Rheaume said he still didn't understand the reason for putting the building closer to the road, which drove the need for relief. Mr. Weinrieb said they looked at creating an open space area for the residents and creating a buffer onto the residential property, so it was a balance. He said the parcel was skewed, so they moved it farther back from the road to get closer to the side yard setback. Mr. Rheaume said there were no structural or drainage issues, and he asked if it was more of a desire to keep away from the residential area. Mr. Weinrieb agreed. He said there was a significant amount of runoff from Lafayette Road running through the site, and by eliminating the pavement in front, they would be able to capture and treat it. Mr. Rheaume said the applicant did a good job of lowering down but still had a fair amount of reveal of the parking level to Lafayette Road. He asked if the applicant considered going down further to eliminate the reveal on that side. He asked why the ventilations along Lafayette Road were critical to making the parking lot work. Mr. Weinrieb said the grading was to ensure that the water coming off Hoover Drive into the garage would not be drained.

Project architect Mark Gianinny said that, based on the grading coming in from Hoover Drive where the garage floor level was set, it put them down to about a half-story for the parking. He said the code requires that an open parking garage have an open area along the perimeter that included the entrance door. He said they could relocate some of the openings to the other side but they were trying to align them with the other proposed openings on the other levels and they also wanted to conceal some of it with landscaping. Mr. Rheaume said in 2017, the Board agreed that the next parcel down was a large on and that extending some of the concepts of G1 made sense. He said now the applicant was asking to take the next step by merging the two lots. He said it was almost like a Character District and asked if the design was compatible for what was called for there. Mr. Gianinny said he didn't know because it wasn't considered. He said they were looking at the context of other multi-family properties on Route One. Mr. Rheaume asked if every unit would have two bedrooms and Mr. Gianinny agreed. Mr. Mattson asked if the applicant considered proposing just eight units instead of 16. Attorney Durbin said eight units were permitted and if the lots were separate, they could have 16 units, but the lot area per dwelling would restrict them to three units. Mr. Weinrieb explained why the numbers would no longer work if they had only eight units. He said the 750-sf units were so small that they would get only so much for rent. He said they were trying to mask the back lot parking.

Mr. Rheaume asked about the Staff Memo's stipulation. Ms. Casella said the stipulation was added on bigger projects because as the project went through TAC and the Planning Board, some elements could move around the property. It was further discussed. [Timestamp 1:42:04]

Chair Eldridge opened the public hearing.

SPEAKING IN FAVOR OF THE PETITION

No one spoke.

SPEAKING IN OPPOSITION TO THE PETITION

John Hudson said he lived at the Westerly. He said there were many accidents due to speed and he was concerned about safety. He said 16 units with possibly two cars each plus visitors would cause a lot more congestion and risks. He said people coming off West Road routinely made left-hand turns where it was a right-turn only.

Diane (last name indecipherable) said she lived at the Woodlands and was also concerned about congestion in the area. She said eight units were fine but 16 were too big for the size of the lot.

Greg Mahanna of Pheasant Lane said he represented himself and the Pheasant Lane Homeowners Association. He said the traffic and backups on Lafayette Road were safety issues and sightlines were already restricted because the road curved. He asked that the petition be tabled until a traffic plan and a site walk could be done and to further consider whether the structure should be 15 feet closer to the center line of Route One. He noted that Lafayette Road was a State road and not a City one and asked who determined setbacks from the center line. He also noted that Route One would eventually be widened to five lanes. He said it was more of a safety issue than an affordable housing one. He said no projected rents were heard and felt that the proposed development was more luxury housing and not employee housing.

Peter Sanderson of the Westerly said he was concerned about safety issues on Lafayette Road.

A woman (last name indecipherable) of the Westerly said the values of surrounding homes and the Westerly would be affected. She said she didn't know if the applicant's employees could afford it. She said visitors would park at the Westerly or on the neighborhood streets. She asked that the Board do a site walk and that the existing apartments be remodeled.

Karen Parns of the Westerly agreed with the comments about the traffic and congestion issues. She said were numerous accidents in the area. She asked how many parking spaces would be allotted for residents of 16 units. She said building closer to Lafayette Road would further obscure the view of people coming to Hoover Avenue and Lafayette Road from Elwyn Park and the Woodlands.

Jim Dolphin of the Westerly said he agreed with the other comments. He asked if it was logical to put more and more people in smaller units and still have quality of life.

SPEAKING TO, FOR, OR AGAINST THE PETITION

Rick Becksted of 1395 Islington Street said workhouse housing in Portsmouth didn't work because developers couldn't afford the restrictions. He said the City had to find another way because the demand for workforce housing was too high and the formulas didn't work. He said what already existed on the property should be preserved and that more residential could be placed on the first floor. He said there was no hardship.

Project engineer Eric Weinrieb said the applicant would improve the sightlines because they would get rid of a driveway and the front parking and keep the vegetation in the front of the building low. He said they wanted to move the building closer to Lafayette Road and increase the setback from the right-of-way. He said no one knew the plans that DOT had for widening the road. He said the applicant had to go before TAC and the Traffic and Safety Committee, and if the property were to be redeveloped as retail, the traffic could be more significant.

William Downey of 67 Bow Street (via Zoom) agreed with Mr. Weinrieb. He said the traffic flow would be further compounded if the building were commercial.

Attorney Durbin said none of the neighbors' concerns related to the relief sought, which was density and acreage. He said the lot could support it and that the traffic safety was an issue that would be addressed at the Planning Board and Traffic and Safety Committee level. He said repurposing the building would be a substantial investment and would be very different than what was there now because it would have to be a higher intensity use to support the economics.

Diane (last name indecipherable) said going to 16 units meant more congestion and not just more traffic. She said the density was an issue.

Rich Becksted said the Board had no control over safety and traffic but if they allowed the 16 units, they would impact the safety and density issues. .

Paul Brennan of the Westerly said there would be 32 more people taking a left.

Greg Mahanna said the applicant wanted a variance to move a building closer to Route One but wouldn't need a variance if the building stayed where it was.

No one else spoke, and Chair Eldridge closed the public hearing.

DISCUSSION OF THE BOARD

Mr. Rheaume said there was a lot of passion about the project and the Board had to separate that passion as much as possible by looking at the facts and balance them against the criteria. He said the applicant was asking to put some parking in the secondary front lot. He said the Board didn't want a sea of asphalt in front of the building, so the project met the criteria for that. He said the Traffic and Safety Committee and TAC would look at the traffic issues and the sightline issues. He said the real crux was the combined last two criteria, the relief asked for the number of units on the lot and the density of the lot area per unit. He said the applicant was also restricted by the size of the lot. He said the building could be divided into three and made into luxury townhouses and be compliant. He asked if the Board was comfortable with going from three units to 16 units to allow the level of density with traffic and egress implications. He said most of those things were the purview of the Planning Board and TAC, but the amount of intensity of use on the property was too much and he thought that variance couldn't be allowed. Vice-Chair Margeson agreed that the lot area per dwelling unit was the main issue. She said it was a difficult application to analyze because

the purpose of the mixed residential business district was to provide a transition between residences and businesses and there was no real business in the application. She said the Board had to look at the spirit and intent of the ordinance and it was difficult to define in this case, given that it was an island amid Single Residence B. She said the fact that the Westerly was next door made her less concerned about the lot area per dwelling unit, given that there was so much more residency there in the SRB District.

Mr. Mattson said the Westerly had 40 plus units that generated more traffic than the proposed project would. He said there was no variance asked for the size of the building and the height and building coverage were allowed. He said there could be fewer bigger units or more similar smaller units in it, which would cost less. Mr. Mannle said it was MRB and by right, the applicants could do eight units of 1500 square feet each or even do a 7-11. He said it was different zoning from the Westerly. He said the nearby traffic had always been problematic and didn't think the project would make that much of a difference. He said his issue was the corner lot and the density. He said the center line issue would be analyzed by the Planning Board and TAC. Mr. Rossi said he did not buy into the argument that by approving a variance the Board may be preventing a worse use of the property. He said the so-called worse use was allowed by right and that it wasn't in the Board's purview to circumvent the right of property owners to use property as it's already designated in the zoning ordinance. He said his biggest concern was Lafayette Road and the zoning map and the history of what's been going on in the area. He compared it to a time lapse photo. He said the project would fit into the Gateway District perfectly and might be eligible for workforce housing incentives but that it wasn't in the Gateway District. He said the Westerly was approved because it was adjacent to the Gateway District and wouldn't change the character of the neighborhood. He said the next property was adjacent to the Westerly and could have the same reasoning, and so on. He said he could see it going in a domino fashion all the way to Cumberland Farms. He said Hoover Street was the Rubicon and the natural edge of the *de facto* Gateway zoning that's been extended that far, and he didn't think it was in the interest of the City and residents to continue to extend it beyond. He noted that Attorney Durbin said the intent behind the construction was to create housing for the applicant's employees, so the units were designed to be affordable in the context of the Portsmouth housing market. He said it didn't say that in the definition of the Portsmouth zoning ordinance but it got him into a more favorable frame of mind as a creative solution. He said the Board then learned that there was no intention to make it workforce housing and it was stated that the employees were unlikely to afford to live in the units, so he was confused about why the rationale was in the proposal. He said all those things weighed against approving.

Chair Eldridge said she didn't see the hardship. Mr. Rheaume said the density of the proposal was greater than the Westerly but the Westerly was a bigger structure with more units. He said the applicant was asking for higher density. He said three units and not eight were not allowed by right and that the building could have three units and still be big. He said affordability was not the Board's purview and was based on the median cost of the NH Seacoast area, which was quite high. He said he did not think that the applicant indicated that they didn't think their employees could not afford to live there but said they were not sure that they would be interested in living there because some might have families or live at home.

DECISION OF THE BOARD

*Mr. Rossi moved to **deny** the petition, seconded by Ms. Record.*

Mr. Rossi said granting the variance would not observe or be consistent with the spirit of the ordinance and that it would alter the essential characteristics of the neighborhood. He said the property was surrounded by SRB neighborhoods and was in an MRB one and it didn't comport with the spirit of MRB because it didn't have a business component and did not comport with the spirit of the ordinance. He said he would not address all the other failures. Ms. Record concurred and said she just did not see the hardship. Mr. Rossi agreed and said there was no hardship presented, particularly in regard for the need for 16 units as opposed to eight or for the low square footage per unit, as compared to the ordinance's provisions. Mr. Mattson said that, aside from the 16 units, the applicant must establish that the property is burdened by the zoning restrictions in a manner distinct from other similarly situated properties. He said it was spot zoning and MRB but surrounded by different zoning. He said the unique condition of the property was the restriction from other similarly situated properties. Mr. Rheaume said he would reluctantly support the motion and gave several reasons why. He said the variance requests went beyond what the Board could approve and tie into their criteria.

*The motion passed and the application was **denied** by a vote of 5-2, with Vice-Chair Margeson and Mr. Mattson voting in opposition.*

E. The request of **Creeley Family Trust, Sean Creeley** and **Andrea Creeley Trustees (Owners),** for property located at **337 Richards Avenue** whereas relief is needed to demolish the existing detached garage and construct an addition and attached garage to the primary structure which requires a Variance from Section 10.521 to allow a one and a half (1.5) foot rear yard where 20 feet is required. Said property is located on Assessor Map 130 Lot 2 and lies within the General Residence A (GRA) District. (LU-23-113)

SPEAKING TO THE PETITION

Attorney Derek Durbin was present on behalf of the applicant, along with project designer Jen Ramsey. Attorney Durbin reviewed the petition and said the garage was in poor condition and too small to accommodate a modern vehicle and was just used for storage. He said the proposed new two-car garage would have a living space above it and would be eight feet taller than the existing structure. He said there were two letters in support, one from the most affected abutter.

Vice-Chair Margeson asked if the addition would take up the left side yard space. Attorney Durbin agreed and said it would be more toward the usable yard area. Vice-Chair Margeson said it was another issue where the garage was right on the property line, and she asked if the paved driveway was for the abutting property on the other side. Attorney Durbin agreed and said the garage slightly encroached onto his client's property. He said the new garage would be angled and pushed in more from the back side of the existing garage. Vice-Chair Margeson said if the garage were pushed in so

that it was conforming, the applicant would have some overlap with the driveway and would probably match up better with the abutting driveway. Attorney Durbin said the driveway would then extend back further, so there would not be a usable side yard. He said it would vastly increase the size of the paved driveway area. He said it would replace the impervious surface with Impervious surface but would eliminate any potential for the mud room/living room area proposed that would tie in with the garage addition.

Mr. Rheaume asked what the current gross area was on the single floor for the existing structure. Attorney Durbin said it was about 1,100 square feet. Mr. Rheaume said there was a huge open space off to the right hand side of Richards Avenue but the applicant claimed that putting a driveway there was different from the rest of the neighborhood. He asked why one more driveway in that area wasn't in keeping with the neighborhood. Attorney Durbin said the applicant did their due diligence and the neighbors disfavored putting a driveway in that area. He said the primary access was already off Lincoln Avenue. Mr. Ramsey said Richards Avenue opened like a one-way street when there were cars parked on each side and there was concern with adding another garage. She said a home with 2 or 4 cars backing out in that street would add more congestion. She said they were adding a sizeable addition but trying to keep some of the home's flow and functionality attributes. Mr. Rheaume said the requested 1-1/2 feet was tight to the property line. He asked if the applicant had considered keeping the garage as a one-car one and expanding out again into that portion of the lot that was allowed by zoning. Ms. Ramsey said they looked at several options and opted for a two-car garage from a functional standpoint. She said the home was only 20 feet wide and if they moved the garage and swung it around, the sunny side of the play yard would be obliterated and impact the neighbors' light and privacy. Attorney Durbin said the neighbors and the applicant discussed having a maintenance easement. He said the portion of the addition along the property line would be angled away from the abutting property but would only be a few more feet in length along that boundary.

Chair Eldridge opened the public hearing.

SPEAKING TO, FOR, OR AGAINST THE PETITION

No one spoke, and Chair Eldridge closed the public hearing.

DISCUSSION OF THE BOARD

Mr. Rossi said the small requested variance would not change the degree of nonconformance of the lot. He said the massing along that border would be significantly different, noting that he walked along the area and it looked out of place by being too small of a house with a lot of massing around it. He said he did not think the change would affect the neighborhood's character, and he noted that the most affected abutter was in support. Vice-Chair Margeson said she would not support the application for the same reasons Mr. Rossi said he would. She said she saw the increase in massing and didn't see a hardship for having a two-car garage. Mr. Rheaume agreed and said he didn't see a hardship. Chair Eldridge said the ask was small but the change to the property would be enormous. Mr. Rossi said he supported the petition because modernizing that type of home to meet the contemporary needs of a family was a strong mandate within the public interest. Mr. Mannle said there were other ways to have a two-car garage and a big side yard.

DECISION OF THE BOARD

*Mr. Rheaume moved to **deny** the variance request, seconded by Mr. Mannle.*

Mr. Rheaume said the petition only had to fail one of the criteria. He said the biggest issue was what was unique about the property that prevented its adequate use by the applicant in any other way. He said he didn't see a hardship sufficient to warrant the level of relief asked for. He said he questioned the request for 1-1/2 feet off the property line for a substantial building height. He said the massing and size were much larger than existing and there were potential relief valves within the property itself. He said the proposal went in the one direction that the zoning ordinance did not allow and he didn't think it met the hardship criteria. Mr. Mannle concurred and had nothing to add.

*The motion **passed** by a vote of 4-3, with Ms. Record, Mr. Rossi, and Chair Eldridge voting in opposition.*

F. REQUEST TO POSTPONE The request of **Kathryn Waldwick** and **Bryn Waldwick (Owners),** for property located at **30 Parker Street** whereas relief is needed to demolish and remove the existing shed and covered porch and construct a new attached shed with a covered porch which requires the following: 1) Variance from section 10.521 to permit a) 45% building coverage where 35% is allowed, b) one and a half (1.5) foot right side yard where 10 feet is required, and c) two (2) foot rear yard where 20 feet is required; and 2) Variance from Section 10.321 to allow a nonconforming structure or building to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is located on Assessor Map 126 Lot 27 and lies within the General Residence C (GRC) District. **REQUEST TO POSTPONE** (LU-23-117)

DECISION OF THE BOARD

The petition was **postponed** to the September 6 meeting.

IV. OTHER BUSINESS

There was no other business.

V. ADJOURNMENT

The meeting **adjourned** at 10:48 p.m.

Respectfully submitted,

Joann Breault
BOA Recording Secretary

MINUTES OF THE
BOARD OF ADJUSTMENT MEETING
EILEEN DONDERO FOLEY COUNCIL CHAMBERS
MUNICIPAL COMPLEX, 1 JUNKINS AVENUE
PORTSMOUTH, NEW HAMPSHIRE

7:00 P.M. **August 22, 2023**

MEMBERS PRESENT: Phyllis Eldridge, Chair; Beth Margeson, Vice Chair; David Rheaume; Paul Mannle; Thomas Rossi; Jeffrey Mattson; Jody Record, Alternate

MEMBERS EXCUSED: ML Geffert, Alternate

ALSO PRESENT: Jillian Harris, Planning Department

Notes: Alternate Ms. Record took a voting seat for all petitions. The timestamps denote the time of the discussion in the meeting video.

Chair Eldridge stated that the applicant for Item E, 303 Bartlett Street, requested a postponement.

*Mr. Rheaume moved to **suspend** the rules by pulling Item E, 303 Bartlett Street, out of order. Mr. Mannle seconded. The motion **passed** unanimously, 7-0.*

*Mr. Mannle moved to **postpone** the petition to the September 19 meeting, seconded by Mr. Rossi. The motion **passed** unanimously, 7-0.*

I. NEW BUSINESS – PUBLIC HEARING

Mr. Mattson recused himself from the following petition. The Board discussed whether Fisher v. Dover applied and decided that it did not need to be invoked. [Timestamp 3:20]

A. The request of **Islamic Society of the Seacoast Area ISSA (Owners),** for property located at **686 Maplewood Avenue** whereas relief is needed to construct 6 single living unit structures which requires the following: 1) Variance from Section 10.520 to permit 10,462 square feet of lot area per dwelling unit where 15,000 if required; and 2) Variance from Section 10.513 to permit six (6) free standing buildings where only one (1) is permitted. Said property is located on Assessor Map 220 Lot 90 and lies within the Single Residence B (SRB) District (LU-23-57)

SPEAKING TO THE PETITION

Attorney Justin Pasay was present on behalf of the applicant, along with project engineer John Chagnon and project architect Carla Goodnight. He reviewed the petition. [Timestamp 8:34]

Mr. Rossi asked if the applicant looked at the spacing between the buildings themselves and how far apart they were compared to the SRB zone further up Maplewood Avenue. Attorney Pasay said the project complied with the side setback requirements and that he didn't anticipate any relief for that piece of it. Mr. Rossi said he was looking at the number of structures and how that compared to the density in the sense of having the open space around structures when there is one structure per lot elsewhere in the neighborhood. Attorney Pasay said the goal was to have a reasonable amount of spacing between the individual units but also be able to facilitate continuing the proposal for 6500 square feet of recreational space. He said there was the issue of the form of ownership as a condominium instead of a single-family lot. He said it went to the uniqueness of the property, and they hoped to strike that balance between the form of ownership as a condominium and the density.

Mr. Chagnon reviewed the site plan [Timestamp 15:22]. He noted that the setbacks between the buildings was approximately 20 feet, so if the zoning setback of 10 feet to the property line were applied, it aligned with the light and air between buildings in the zone. Ms. Goodnight reviewed the petition and Attorney Pasay summarized the variance criteria. [Timestamp 18:40]

Mr. Rheaume clarified that the amenity was for the use of the six condominium units and their guests and was not a public one. Mr. Rossi said the previous proposal of subdividing the lots and building a unit on each lot wasn't feasible, and he asked if it was due to the need for an access road. Attorney Pasay said building a city road that met the design standards to accommodate a formal subdivision had been the issue.

Chair Eldridge opened the public hearing.

SPEAKING IN FAVOR OF THE PETITION

Jim Lee of 520 Sagamore Avenue said he was a real estate broker and that one of most important things was location. He said it was a terrible location, which made it a good project. He said several previous applications to build things there didn't work out, and the big benefit to the public was that the units would be so far back that they would not be seen from the road.

SPEAKING IN OPPOSITION TO THE PETITION OR SPEAKING TO, FOR, OR AGAINST THE PETITION

No one spoke, and Chair Eldridge closed the public hearing.

DISCUSSION AND DECISION OF THE BOARD

Vice-Chair Margeson said the property did have special conditions and was three times the size that the SRB zone required. She said it had an odd configuration with a small frontage on Maplewood Avenue, but she didn't believe that it met the hardship for six units. She noted that the zoning ordinance said there was only supposed to be one freestanding building per lot and that she would have no problem with four dwellings per lot on the property because it would still retain the lot area requirements of the SRB, but she did not think the applicant met the hardship criteria for the additional two dwellings on the lot. Mr. Rossi agreed that four might be an easier request.

*Mr. Rheaume moved to **grant** the variances for the application as presented and advertised, seconded by Mr. Rossi.*

Mr. Rheaume said the applicant met the criteria [Timestamp 33:01]. He said granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance. He said the unique shape of the property, long and narrow on the street and long in depth, created a set of circumstances that allowed the applicant to take advantage of that by putting multiple buildings that were not generally allowed in the SRB zone, but the positioning of them wouldn't be visible from the road. He said the applicant made a good argument that he approximated the overall density of the other SRB properties to the west. He noted that the Business and GRA districts were also closer to the property and had higher densities, so he felt that the nature of the density aspect was reasonable and within the spirit of the ordinance. He said the condos would be hidden and were respectful of the overall architecture of the neighborhood and Portsmouth in general. He said granting the variances would do substantial justice because of the other unique characteristics, like the short frontage, lot depth, and topography, and there was really nothing the public would perceive from the homes that would outweigh the applicant's ability to make full use of his property. He said it would not diminish the values of surrounding properties because the property butted up against the Business District and had the interstate highway on the opposite side. He said what was built would not be perceived by anyone as something that would be awkward and reduce property values. He said it was also burdened by a power line easement on the rear of the property. Relating to hardship, he said there were the unique characteristics of the property sandwiched between the Business district and very close to the GRA district and up against the interstate. He said the property's long and narrow depth did not look like any of the other SRB parcels nearby and the ones that were closely imitated were ones that had multiple buildings on them. He said those unique characteristics allowed more development than would normally be allowed and that it was a permitted use in a permitted zone.

Mr. Rossi concurred. Regarding the hardship, particularly as it pertained to six structures on that lot, he said there was a special condition of the lot, the shape and size of it and felt that the building of six structures on it did not defeat the public purpose of the SRB district because of the way the property was designed. He said it would maintain a density that was as good if not superior to the surrounding SRB properties and it would maintain adequate space between the structures so that the intended purpose of the ordinance to provide light and air between buildings would be achieved, even though it would be a bit more dense than what the SRB would typically allow.

*The motion **passed** by a vote of 4-2, with Mr. Mannle and Vice-Chair Margeson voting in opposition.*

Mr. Mattson returned to his voting seat. The Board discussed whether Fisher v. Dover applied and, except for Vice-Chair Margeson, had no issues with Fisher v. Dover. [Timestamp 42:03]

B. The request of **Karyn S. DeNicola Rev Trust, Karen DeNicola Trustee (Owner),** for property located at **281 Cabot Street** whereas relief is needed for a variance from Section

10.521 to allow a) three (3) foot front yard where 5 feet is required, b) three and a half (3.5) foot left side yard where ten (10) feet is required, and c) 36% building coverage where 35% is allowed; and 2) Variance from Section 10.515.14 to allow two (2) mechanical units to be located 7 feet from the property line where 10 feet is required. Said property is located on Assessor Map 144 Lot 20 and lies within the General Residence C (GRC) District. (LU-23-84)

SPEAKING TO THE PETITION

Attorney Justin Pasay was present on behalf of the applicant, with project architect Carla Goodnight and project engineer John Chagnon. He reviewed the petition [Timestamp 50:16]. Ms. Goodnight said two letters of support were received, and she reviewed the site plan [Timestamp 55:02]. Attorney Pasay reviewed the criteria and said they would be met. [Timestamp 58:48]

Mr. Mattson asked if the applicant averaged the front yard setbacks for the neighboring properties. Attorney Pasay said they had not but noted that there was encroaching by the stairs that went over the line into the City's right-of-way but was consistent with the properties on the east side.

Chair Eldridge opened the public hearing.

SPEAKING IN FAVOR OF THE PETITION

Elizabeth Bratter of 159 McDonough Street and 431 Cabot Street explained why she thought it was appropriate for the variances to be granted. [Timestamp 1:07:02]

SPEAKING IN OPPOSITION TO THE PETITION

No one spoke.

SPEAKING TO, FOR, OR AGAINST THE PETITION

James Beale of 227 Cabot Street said 28 Rockingham had a lot that was nine square feet larger and the owner was able to put a 1,358-sf house on it without any variances. He said the proposed view of Cabot Street was misleading because it looked like the new building would be the same height as the other four buildings on the street. He said there was no information in the packet about what the finished height of the building would be. He said the applicant indicated that their lot was smaller than the rest of the lots on Cabot Street, but he said there were five smaller lots. He said allowing the variances would be a detriment to the public due to the loss of light and air to the direct abutter.

Ms. Goodnight said they would replicate the existing building's width, height, pitch, etc. and that the new building at the rear would be narrower, so the roof would be lower. She said two of the requested variances were needed to keep the proposed building in the same position as the existing one, so the side variance and the other front yard variance were dictated by that position.

Mr. Mannle asked what the height of the roof on the final building would be. Ms. Goodnight said she didn't recall but that it would be the height of the building next door.

No one else spoke, and Chair Eldridge closed the public hearing.

DISCUSSION OF THE BOARD

Mr. Mattson said the building height as defined in the ordinance was being halfway between the eave and the ridge, and he further explained it. He said the building was shown as 25 feet tall on the application, and if the applicant went beyond what was allowed, a variance would be needed. Mr. Rossi said the applicant wanted to demolish a building, so he would start with a clean slate. He asked why minor improvements and setbacks compared to the existing structure were relevant. He said the hardship criteria would have to be satisfied and he didn't see how they would be. Mr. Mannle said he was unaware that the house would be demolished because it wasn't in the Legal Notice, but he agreed that it would be a clean slate and that a 30-ft wide structure could easily fit on the parcel. Mr. Rheaume explained why he thought there was a hardship and said what was being asked for in terms of setbacks made sense. He said the applicant was consistent with the allowable lot coverage because they were meeting the current 36 percent. Mr. Mattson agreed that a 30-ft wide house could be built but there could be a hardship because the lot was narrower than allowed by the district. He said the building's design was being driven by the existing historic building, and the new building would be closer to conforming.

Vice-Chair Margeson said the lot depth was about 27.5 feet longer than what was required by the zoning ordinance, so the applicant had a lot of space to go back just the two feet for the front yard. She said the applicant was trying to take advantage of the open space on the other lots. She said she agreed with the Board's comments about the front and left yard setbacks but said there would be a much bigger structure on the lot line close to the abutter. She said the applicant could conform to the zoning ordinance on the side yard setbacks if they cut off some of the house. She said the purpose of the zoning ordinance was to protect structures of historical and architectural interest in the City, even outside of the Historic District. She said the potential to change the character of the neighborhood was great and she would not support the application.

DECISION OF THE BOARD

*Mr. Rheaume moved to **grant** the variances for the application as presented and advertised, seconded by Mr. Mattson.*

Mr. Rheaume said the total building coverage relief what essentially what was there now and only one percent above what was allowed. He said it came down to the applicant being compliant on the side yard setback with the new addition that would recreate the feel of the old home and continue the look and feel of the neighborhood. He said the Board had to be careful about taking on the preservation of historic structures, which he further explained [Timestamp 1:28:40]. He said granting the variances would not be contrary to the public interest and would observe the spirit of the ordinance because the proposal was in keeping with the overall character of the neighborhood. He said the requested relief was not excessive and the applicant had tried to respect all the setback

requirements. He said the positioning of the home would be in keeping with the current positioning of the row of houses. He said substantial justice would be done because there was no public perceived need that would say that having a slightly additional setback of the driveway from the next house over would provide a substantial benefit. He said the benefit of keeping the overall rhythm of the street would outweigh any perceived need to more fully enforce the zoning ordinance. He said granting the variances would not diminish the values of surrounding properties, noting that the property was probably a victim of demolition by neglect and the replacement would increase the values of surrounding properties due to its modern amenities and by being a more structurally sound building. Relating to the hardship, he said some of the unique conditions of the structure being demolished had a historic presence of being shoved to one side of the lot and having the driveway on the other side. He said the additional structures were compliant with the setbacks and that the use was a legitimate one for replacing a single-family home with another single-family home. Mr. Mattson concurred. He said the existing home could be demolished without a variance and a contemporary one could be built within the setbacks, so he appreciated the effort gone into not altering the essential character of the neighborhood.

Mr. Mannle said he would not support the application because the applicant had structural issues with the existing house but they still bought it, knowing that they would come before the Board for relief. Mr. Rossi said he still had a problem with the hardship standard and thought that when knocking a structure down and starting with a green field, the burden of approving the hardship on all of those things was not comparative to the structure that currently existed because its foundation no longer had any relevance. He said he did not see anything in the stated hardship and unique characteristics of the lot, and he did not agree that it was a unique lot because it wasn't smaller than the other lots on that side of Cabot Street and was not the only lot adjacent to the CD-4 District. With regard to whether the Board had a basis for considering the preservation of structures of historic or architectural interest, he said that was a broadly interpretable statement within the zoning ordinance. He said one could argue that the Board could make that determination because they had local knowledge of the City but he didn't think it was a good idea for the Board to speculate on whether they had a solid legal foundation for indulging in such determinations. He said there was a big difference in a historic structure and something that was rebuilt to look like one.

*The motion **passed** by a vote of 4-3, with Mr. Mannle, Vice-Chair Margeson, and Mr. Rossi voting in opposition.*

The issue of whether Fisher v. Dover applied to the next petition was discussed by the Board and it was agreed that Fisher v. Dover did not apply. [Timestamp 1:44:08]

C. The request of **Novocure Inc. (Owner),** for property located at **64 Vaughan Street** whereas relief is needed to construct a penthouse which requires Variances from Sections 10.5A43.30 and 10.5A21.B (Map) to allow a maximum height of 47 feet where 42 is allowed. Said property is located on Assessor Map 126 Lot 1 and lies within the Character District 5 (CD5) and North End Incentive Overlay District. (LU-20-214)

SPEAKING TO THE PETITION

Attorney John Bosen was present on behalf of the applicant, with Dean Smith from Novocure and project architect Mark Mueller. Attorney Bosen said they appeared before the Board in 2022 and were a denied a height variance but several things occurred, which he reviewed [Timestamp 1:44:42]. Mr. Mueller then reviewed the plan and Attorney Bosen reviewed the criteria.

Vice-Chair Margeson said the applicant stated that the hardship was that there was no outdoor space for employees to congregate, but she thought they could do so without the penthouse. Attorney Bosen said the lot was an irregularly-shaped one that had frontage on two rights-of-way and potentially one on the Worth parking lot. He said filling in that area of the penthouse would allow the employees and guests of Novocure to use it on a regular basis despite the weather.

Chair Eldridge opened the public hearing.

SPEAKING IN FAVOR OF THE PETITION

Barry Heckler of 25 Maplewood Avenue Provident Condominiums said he was the president of the Board of Directors and that all the condo owners were in support of the enclosure of the rooftop deck. He said it would add to the value of the Novocure building and would also be available to Portsmouth residents if they needed a place to congregate. He said it would not be noticeable by any vantage point in and around the 25 Maplewood Avenue property or down Vaughan Mall.

John Ducey said he owned 172 Hanover Street and shared a common wall with the applicant. He said the top of the building wouldn't be seen at all.

Allison Griffin of 25 Maplewood said she spoke against the project previously but now it had the appurtenance and the second part of the building would match it. She said it made the building look better and she was no longer worried about the height.

SPEAKING IN OPPOSITION TO THE PETITION

No one spoke.

SPEAKING TO, FOR, OR AGAINST THE PETITION

Katherine Hillman said she was a city resident and thought an interesting solution would be a rooftop garden instead of an all-glass space.

Elizabeth Bratter of 159 McDonough Street read a synopsis of the letter she sent to the Board. She said the structure had a flat roof and not a mansard roof like the applicant claimed. She said the penthouse was being shown as a 14-ft tall one and would have a height increase of 54 feet instead of the allowed 40 feet. She said the variance should not be approved and she explained why the project did not meet the criteria [Timestamp 2:11:30].

No one else spoke, and Chair Eldridge closed the public hearing.

DISCUSSION AND DECISION OF THE BOARD

Mr. Rossi said the buildings to the north were lower than 47 feet and asked what differentiated the applicant's structure from those in terms of hardship. It was further discussed. Vice-Chair Margeson said the building height requirement was currently 40 feet with the penthouse at 42 feet and the other five feet was not allowed by the ordinance. Mr. Rossi said he weighed a 5-ft variance more heavily than he would have in the old ordinance because it was more impactful. [Timestamp 2:31:20]

*Mr. Rossi moved to **grant** the variances for the application as presented and advertised, seconded by Mr. Mattson.*

Mr. Rossi said granting the variance would not be contrary to the public interest and would observe the spirit of the ordinance. He said there was no vested interest in the public to deny the variance because it did not impact the safety, health, and welfare of the general public. He said substantial justice would be done because there would be no loss to the public with regard to the appearance of the area because the structure is mostly not visible in the surrounding streetscape. He said granting the variances would not diminish the values of surrounding properties because several of them were already taller and having a penthouse on a nearby property would have no impact in a negative way on the values of the properties. He said the penthouse had a nice aesthetic to it and would look a lot better than an open flat roof and would enhance the values of surrounding properties where it could be seen. Relating to the hardship, he said the appurtenances of the elevator on the ends shielded the sight line from the properties on Maplewood Avenue. He said the ridge line did match up with the top level of the appurtenances, which was a special circumstance that distinguished it from the nearby properties in a way that was relevant to the variance being applied for. He said denying the variance due to those special conditions would not do anything to improve the way the building fit in with the surrounding neighborhood and would not alter the character of the area. Mr. Mattson agreed that it would not alter the area's character, noting Jimmy's Jazz Club with its glass structure. He said that the amount of rights-of-way surrounding the property on all sides and the only other building that could be affected (La Caretta) were unique conditions of the property where it was zoned a small lot and had less concerns of light, air and privacy being affected by neighboring buildings. He said several other surrounding buildings were taller. He said the proposal would add functional space to existing parts of the structure that were already at this height and would not dominate or be out of scale with the neighboring properties. He said there would be no fair and substantial relationship between the purpose of the height requirements and its application to the property, and he noted that the penthouse would not be visible to the other setbacks.

Mr. Rheaume said the penthouse would not change the fundamental use of that portion of the property. Chair Eldridge said she would support it for many of the stated reasons and because she considered the 5-ft request minor in the whole mass of the building.

*The motion **passed** by a vote of 5-2, with Mr. Mannle and Vice-Chair Margeson voting in opposition.*

The Board decided that Fisher v. Dover was not invoked in the following petition. [Timestamp 2:59:02]

D. The request of **Cynthia Austin Smith and Peter Smith (Owners**), for property located at **9 Kent Street** whereas relief is needed to demolish the existing two (2) living unit structure and construct a one (1) living unit structure which requires a Variance from Section 10.521 to allow a) 5,000 square feet of lot area where 7,500 square feet are required and b) 5,000 square feet of lot area per dwelling unit where 7,500 square feet are required. Said property is located on Assessor Map 113 Lot 42 and lies within the General Residence A (GRA) District. (LU-23-119)

SPEAKING TO THE PETITION

Attorney Monica Kaiser was present on behalf of the applicant, with project engineer John Chagnon and landscape architect Victoria Martel. She reviewed the petition and site plan. [Timestamp 3:00:58]

Mr. Rossi said it seemed that the crux of the issue was whether the nonconforming use was being expanded, which would help determine whether a variance was required. Attorney Kaiser said the use would be reduced by the fact that there was an existing duplex that supported two families and a single-family was proposed. Mr. Rossi said the use was residential and it was a nonconforming type of use in the past. He asked if the volume of the new building would be the same or larger than the existing structure. Attorney Kaiser explained why there was a ten percent reduction in building coverage. She said the new building's height would comply and required no relief, but she said she didn't know the height of the existing building. Vice-Chair Margeson said the patio would be less than 18 inches so it wouldn't count as a structure, but there were several things on that patio, like a grill and a spa, and she asked if those things were built in. Attorney Kaiser said the spa was treated by City Staff as an accessory structure and met the 5-ft setback requirement. She said it was the type of thing that could also be removed, but in this case it was set into the ground and required no exterior mechanicals. She said the applicant had been advised that it required no relief. Vice-Chair Margeson asked what the structure adjoining the grill was. Attorney Kaiser said it was on the landscape plan and within the building envelope for the side and the year and didn't require relief. Mr. Mannle said that any structure 18 inches aboveground was part of the building. He noted the 6-ft high masonry wall on the proposed pavers on the abutter side and a 4-ft wall on the back of the property. Attorney Kaiser said those were treated as a fence. Vice-Chair Margeson said the plans were complicated and it wasn't apparent as to where the building envelopes were.

Chair Eldridge opened the public hearing.

SPEAKING IN FAVOR OF THE PETITION

No one spoke.

SPEAKING IN OPPOSITION TO THE PETITION

Dave Mikolaities of 19 Kent Street said the plan set was incomplete compared to the original one because it missed the patio and driveway sections, drainage and grading plans, utility and landscaping plans, and architectural renderings. He said the proposal was contrary to the public interest because the new home would increase from 30 feet to 56 feet in length and the mass of the home will be 56'x40' high and alter the light and air of the public. He said the conforming use would be expanded. He said the proposal failed the criteria.

Cliff Hodgdon of 10 Kent Street said the proposal appeared to comply with the lot size setbacks but the house was an imposing structure and looked out of place with the character of the neighborhood and adjoining city parks. He said the owners thought they had the right to build part of their driveway on the city property at the end of the Rockland Street Extension, and he asked what would happen with snow removal and access to the playground and Langdon Park. He said it wasn't a good idea to transplant a fruit tree on an unpaved city sidewalk. He asked where the stormwater would go. He said the proposal had a lot of vagueness and lacked detailed information.

Duncan MacCallum of 536 State Street said the applicant was entitled to a variance because the lot was only 5,000 square feet, but the lot was a third smaller than normally required for a residential dwelling and the building would be 40 feet high. He said a condition should be included stating that the building height must be smaller or only two stories. He said he was told that the applicant planned to raise the ground level by 17 inches, which would make the size of the building even higher. He said those changes would change the character of the neighborhood.

Barbara Adams of 75 Kent Street said the percentage of lot coverage was still being increased the same way as it was in the first application. She said the underground garage showed a need for a section of asphalt driveway to encroach on part of Langdon Park's grassed area to provide adequate entry in and out of the proposed driveway and garage. She said the cars that were parked on both sides of the end of Rockland Street could be prevented from parking. She said she saw no evidence of hardship because the owners bought the property knowing what it was. She said the proposed design did not meet the character of the neighboring houses nor the City's Master Plan.

Bill Arakelian of 18 Kent Street said the new building would be a vastly oversized one on an undersized lot that would double the size of what was already one of the largest homes in the neighborhood. He said it would be in a very prominent location and would have a negative impact on the abutter and the park. He said the masonry walls on top of an 18" grade would result in a 5'5" cement wall for Langdon Park and the trees would block a sidewalk area on Rockland Street.

Esther Kennedy of 41 Pickering Avenue said the building's size would change the neighborhood and the look of Portsmouth and thought there was no hardship.

Petra Huda of 280 South Street said she agreed that there was too much missing data for the Board to make a decision. She said it was an excessive proposal that would alter the character of the neighborhood and thought the Board should either request more information and drawings or deny the application until they had all the information.

Jim Lee of 520 Sagamore Avenue said there was a disturbing trend in town where newcomers find a house and decide it doesn't work for them and that they need to demolish it and build something bigger. He said any benefit to the applicant would be outweighed by great harm to the public.

SPEAKING TO, FOR, OR AGAINST THE PETITION

Rick Beckstead of 1395 Islington Street said the essential character of the neighborhood would be changed because the proposed home would stand out. He said it was happening all over the city and jeopardizing the character of the neighborhoods. He said there was no hardship.

Mr. Chagnon said the applicant was applying the zoning regulations to dimensional use for the property. He said the Board had enough information to make a decision. He said the plans complied with all the other requirements regarding development of the lot. He said the runoff would not be increased to any neighboring property and the Traffic and Safety Committee would properly site the driveway. He said every public driveway used public property to get from the street to the garage. He said what was seen from the park was a secondary issue. He said the proposal complied with the setback, building height, and coverage requirements as well as lot coverage. He said the proposed structure was a 3-story one and the height wasn't relative to lot size because nothing in the ordinance said one should vary the height of the structure based on the size of the lot. He said the new trees were approved by the Trees and Greenery Committee for planting in a public place.

The Board had questions. Mr. Rheaume noted that Mr. Chagnon referenced the height of the proposed structure as 34'6" above an average grade. Mr. Chagnon said the definition was from existing grade, as it was 6 feet from the proposed structure. He said the structure's height was measured from there to the midpoint. Mr. Rheaume asked what similar dimensions would be to the existing building from the average grade. Mr. Chagnon said it would be wider but didn't know the exact numbers. Vice-Chair Margeson asked how the underground parking would be done. Mr. Chagnon said the property currently rose from the street, and the parking would go down to the basement level from the street. Vice-Chair Margeson asked if the grade would be raised. Mr. Chagnon said possibly. He said a set of steps went up to the yard and the yard was proud of the street about 3.5 feet and that it was at least 3.5 feet to get to a plateau at the base of the current structure. He said the existing floor level grade was about 32 feet and that they didn't have the grading plan but he didn't think the floor would be raised a lot. Mr. Mattson asked if the grade would be changed anywhere where the building height was calculated from. Mr. Chagnon said the ordinance was revised so that the average plan grade is calculated from existing ground, and if the applicant changed the grade, it wouldn't change the calculation of building height. He said there would be grade changes along the Rockland Street side and some changes were proposed with some landscape walls that would align the grade to the grade at the entrance to make it all one grade.

Mr. Rheaume said the public and the Board were concerned that the applicant was somehow building a mound and then building on top and saying it was only 35 feet high. Mr. Chagnon said everything was related to the height of all the structures and that it was related back to the average grade so that they were not exceeding the requirements from the calculated average existing grade. He said the patio in the back was a different measurement and less than 18 inches above the ground, and once it was 18 inches higher it would become a structure, which was the reason it was included

previously, but it had been lowered. Attorney Kaiser further explained the measurement rules that required measuring the grade at various points around the existing building and then averaging it into a calculation called the average existing grade. She said the building wasn't a 5,000 sf building and that the existing home was a 2-1/2 story, not a one story. She said the main structure was 1,075 square feet but didn't know what the figure would be post construction. Chair Eldridge said if the applicant knew the building footprint, they should be able to figure it out. The owner Peter Smith explained that it wasn't just the footprint times 3 because there was an inset on the first floor, and the third floor had a large deck that cut into the square footage.

Vice-Chair Margeson asked Ms. Harris if building the driveway off Rockland Street would go before the Technical Advisory Committee. Ms. Harris said the applicant had to get permission from the Department of Public Works for a driveway permit, but that the right-of-way existed for them to connect. Vice-Chair Margeson asked the applicant if they were raising the grade of the building. Mr. Chagnon agreed and said there were some grade changes associated with the construction along Rockland Street to make it flat around the front of the house. He said the patio would be raised to make it flat because it was a slope, but it would be no more than 18 inches. Attorney Kaiser said the measurement wasn't from that changed grade. Mr. Rossi asked about the patio. Ms. Kaiser said it was the same. Mr. Rossi concluded that the change in grade was not what took the patio out from the lot coverage. Mr. Chagnon said the patio was now no more than 18 inches above the existing grade and it wasn't a structure, and that the patio was lowered but it wasn't because of a change in grade. Attorney Kaiser said they decreased the amount of open space but were still twelve percent above the minimum open space requirement and the building coverage was fully compliant.

Dave Mikolaities of 19 Kent Street said insufficient plans were provided to the Board. He said the new building footprint totaled 1,232 square feet.

No one else spoke, and Chair Eldridge closed the public hearing.

DISCUSSION OF THE BOARD

Mr. Mattson said he previously voted to deny the application and that a lot of it was due to the abutting neighbor who was the most affected. He said he believed that a lot of those changes and the criteria had been addressed. He said he preferred more information but felt that the application was sufficient and everything that the Planning Department required was submitted. He said the complex architectural drawings required some interpretation but the information was in the packet. He said the Board addressing the criterion of altering the essential characteristics should be regarding the use and not the look of the building. Mr. Rossi said the Board was considering what they deemed to be a new application, and whether it was superior or inferior to the old one wasn't part of their consideration. He asked if a variance was needed at all because it was a preexisting nonconforming use. He said there was an expansion of the nonconforming use over the last six months, which was something the Board could approve or not. He said he was frustrated by not being able to get a direct answer from the applicant to the simple question of what the square footage of the living space in the current structure was and what it would be in the new one. He said all he knew now was that the new structure is substantially a more nonconforming use than whatever it was before to 3,300-4,000 square feet. He said several of the public's comments

resonated with him because of his experience of living at the Jersey Shore and watching the character of those beach neighborhoods change because everyone who bought the quaint cabins to be by the shore tore them down and maxed out everything they could do on those lots. He said there was a similar concern in Portsmouth and prices were skyrocketing. He said the proposed project not only expanded the nonconforming use but did so in a manner inconsistent with the essential character of the neighborhood, and he would not support it. Mr. Rheaume said the Board could continue the application if they felt that they needed more information and time to think about it. Vice-Chair Margeson agreed and said she also wanted to see renderings.

DECISION OF THE BOARD

*Mr. Mannle moved to **deny** the petition, seconded by Mr. Rossi.*

Mr. Mannle said the applicant had to fail only one criterion and that it failed Section 10.233.21 of the ordinance because it was contrary to the public interest, considering the size of the proposed structure which would be four stories or 3.5 or three, depending on where the median variance height was measured. He said more information from the applicant would have been better but it wasn't presented, and if the Board granted the variances as presented, it would be contrary to the public interest. Mr. Rossi concurred and said the application also failed the criterion of not affecting surrounding property values. He said the structure was massive, no matter how it was measured, and the expansion of the nonconforming use and the massive structure associated with it would have a deleterious impact on the values of surrounding properties. Chair Eldridge said she would not support the motion because she preferred to continue it and have some of her questions answered and see the building in context. Mr. Rheaume said he would also not support the motion. Mr. Mannle said the applicant could have submitted the necessary information, especially considering that the previous application had architectural renderings.

*The motion to deny **failed** by a vote of 5-2, with Mr. Mannle and Mr. Rossi voting in favor of the motion.*

*Vice-Chair Margeson moved to **continue** the application to the September 19 meeting, seconded by Mr. Mattson.*

Vice-Chair Margeson said the Board needed more answers and a fuller application packet. Mr. Mattson concurred and had nothing to add. *The motion **passed** unanimously, 7-0.*

E. REQUEST TO POSTPONE The request of **Caleb E. Ginsberg and Samantha L. Ginsberg (Owners),** for property located at **303 Bartlett Street** whereas relief is needed to demolish the existing detached garage and construct an addition with attached garage which requires a Variance from Section 10.521 to allow a) seven (7) foot left yard where ten (10) feet is required, and b) two (2) foot right yard where ten (10) feet are required. Said property is located on Assessor Map 162 Lot 13 and lies within the General Residence A (GRA) District. **REQUEST TO POSTPONE** (LU-23-120)

DECISION OF THE BOARD

The application was postponed to the September 19 meeting.

II. OTHER BUSINESS

There was no other business.

III. ADJOURNMENT

The meeting adjourned at 11:40 p.m.

Respectfully submitted,

Joann Breault
BOA Recording Secretary

II. OLD BUSINESS

A. **REQUEST TO POSTPONE** The request of **Kathryn Waldwick and Bryn Waldwick (Owners),** for property located at **30 Parker Street** whereas relief is needed to demolish and remove the existing shed and covered porch and construct a new attached shed with a covered porch which requires the following: 1) Variance from section 10.521 to permit a) 45% building coverage where 35% is allowed, b) one and a half (1.5) foot right side yard where 10 feet is required, and c) two (2) foot rear yard where 20 feet is required; and 2) Variance from Section 10.321 to allow a nonconforming structure or building to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is located on Assessor Map 126 Lot 27 and lies within the General Residence C (GRC) District. REQUEST TO POSTPONE (LU-23-117)

Planning Department Comments

The applicant has requested the postponement of this item to further collaborate with the abutting property. Please see the letter from the applicant's representative as provided in the meeting packet.

ANNE WHITNEY ARCHITECT

9/1/23

Re: BOA Submission for 30 Parker St.

Board of Adjustment
Stefanie Casella
Planning Department
1 Junkins Ave.
Portsmouth, NH 03801

Dear Stefanie,

I'm writing again on behalf of Bryn & Katie Waldwick, to request to postpone the Variance request for 30 Parker St., to the October 17th meeting. They are still working with the Abutter at 40 Parker St, on the rooflines for the Shed. We haven't been able to schedule a meeting to to stake out the proposed Shed Elevations to compare the height of the proposed vs the existing.

We will have a revised submission well before the September 27th deadline. The Variance requests have not changed from the original submission, just the height & shape of the rooflines.

Sincerely,

Anne Whitney Architect

801 Islington Street
Suite 32
Portsmouth
NH 03801
603.502.4387
archwhit@aol.com

II. OLD BUSINESS

B. The request of **Cynthia Austin Smith and Peter Smith (Owners),** for property located at **9 Kent Street** whereas relief is needed to demolish the existing two (2) living unit structure and construct a one (1) living unit structure which requires a Variance from Section 10.521 to allow a) 5,000 square feet of lot area where 7,500 square feet are required and b) 5,000 square feet of lot area per dwelling unit where 7,500 square feet are required. Said property is located on Assessor Map 113 Lot 42 and lies within the General Residence A (GRA) District. (LU-23-119) *This item was continued from the August 22, 2023 meeting to request more information from the applicant.*

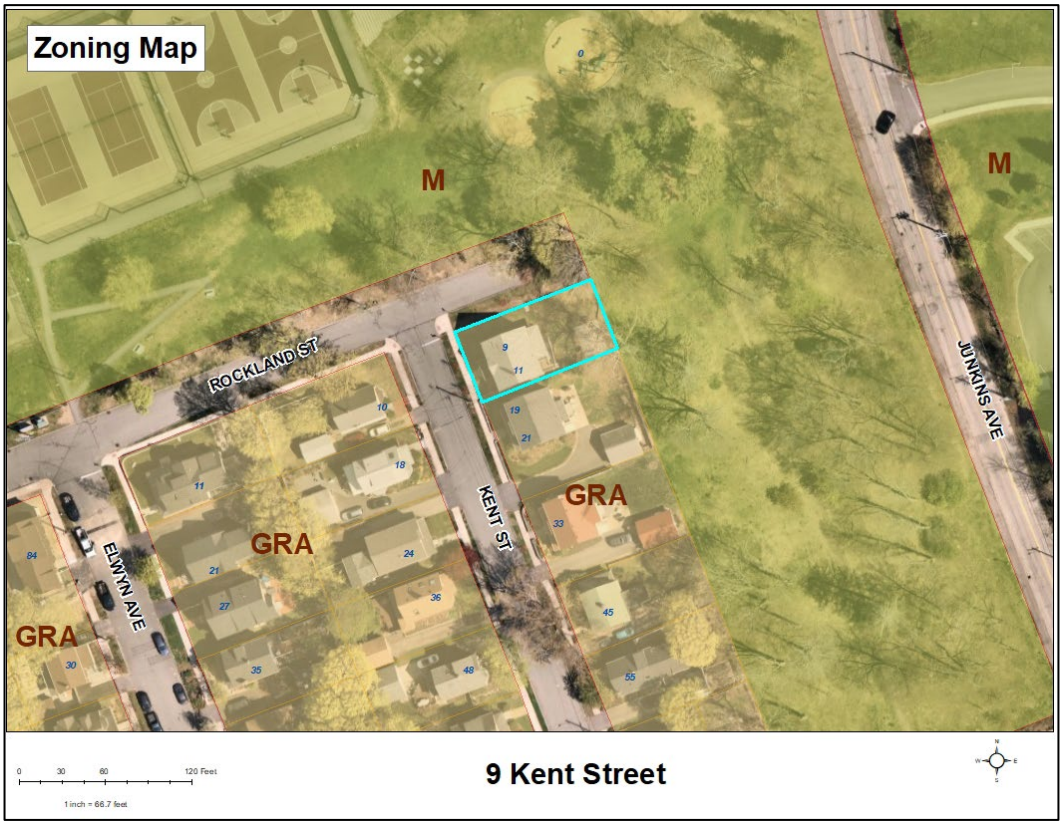
Existing & Proposed Conditions

	Existing	Proposed	Permitted / Required	
Land Use:	Two-family	Demo structure and construct new single unit	Primarily residential	
Lot area (sq. ft.):	5,000	**5,000**	7,500	min.
Lot Area per Dwelling Unit (sq. ft.):	5,000	**5,000**	7,500	min.
Street Frontage (ft.):	50'+	50' +	100	min.
Lot depth (ft.)	100	100	70	min.
Primary Front Yard (ft.):	7	11	10 (using front yard averaging)	min.
Secondary Front Yard (ft.):	16	16	13 (using front yard averaging)	min.
Right Yard (ft.):	0.5	12	10	min.
Rear Yard (ft.):	6	>20	20	min.
Height (ft.):	<35	34.5	35	max.
Building Coverage (%):	35	25	25	max.
Open Space Coverage (%):	63.5	42	30	min.
Parking	0	2 (2 car garage)	2	
Estimated Age of Structure:	1900	Variance request(s) shown in red.		

Other Permits/Approvals Required

- Building Permit

Neighborhood Context



Previous Board of Adjustment Actions

July 19, 1988 – Relief from Zoning Ordinance including: Variance from Article III, Section 10-302 are requested: a) construction of 4’ x 20’ rear egress stairs from the second floor to rear yard with 33% building lot coverage in a district where the maximum building lot coverage allowed is 20% and b) construction of said stairs with a 2 ½’ right yard where a 10’ side yard is the minimum in this district. The Board voted to **grant** the request as advertised.

March 29, 2023 – The Board considered the application for demolishing the existing two-family and constructing a single-family dwelling which requires the following: 1) Variances from Section10.521 to allow a) a lot area and lot area per dwelling of 5,000 square feet where 7,500square feet is required for each; b) 53% building coverage where 25% is the maximum allowed; c) a 4.5 foot rear yard where 20' is required; d) a 0.5 foot side yard where 10 feet is required; e) a 0 foot front yard where 11 feet is allowed under Section 10.516.10; and f) a 9.5foot secondary front yard where 13 feet is allowed under Section 10.516.10. 2) A Variance from Section 10.515.14 to allow a 1.5 foot setback for a mechanical unit where 10 feet is required. The Board voted to **postpone** to the April 18, 2023, meeting.

April 18, 2023 - The Board voted to **postpone** the March 29, 2023, petition to the May 16, 2023, meeting.

May 16, 2023 – The Board voted to **deny** the March 29, 2023, request.

Planning Department Comments

At the August 22, 2023 Board of Adjustment meeting, the Board made the following decisions:

1) The application was substantially different from the previous submission and Fisher vs. Dover was not invoked.
2) The public hearing was closed.
3) A voted to deny the application failed.
4) The Board voted to continue the application to the September 19, 2023 meeting with the request for the following information:

- What is the height, as defined by the Zoning Ordinance, of the structure to be demolished relative to the calculated average grade (elevation 28.92)?
- Dimensions for the existing and proposed house including square footage
- A streetscape rendering
- Will there be City property used to a higher degree than anyone else when they pull out of the garage?
- A survey plan that just shows the building envelope (without landscaping)
- Why is the spa exempt from yard requirements and does it qualify as a temporary structure?
- How is the ground level parking going to be built and what will the change in elevation be?

The applicant has presented the requested information in their updated submission package. Staff have readvertised the application in anticipation of the Boards vote to re-open the public hearing.

For the Board to consider the presented information from the applicant and make a decision, staff recommend the following procedure:

1) The Board votes to suspend the rules and reopen the public hearing.
2) The applicant gives a brief summary of the new information.
3) The Board asks questions of the applicant and project team.
4) The Board receives public comment to, for, or against the application.
5) The Chair closes the public hearing.
6) The Board discusses the application.
7) A Board member makes a motion
8) The motion is discussed, supported by findings of fact, and voted on.

For this project, the complete demolition of the existing structure creates a vacant lot and will require relief for the non-conforming dimensions of the lot. See Section 10.311 copied below for reference.

> ***10.311*** *Any lot that has less than the minimum lot area or street frontage required by this Ordinance shall be considered to be nonconforming, and no use or structure shall be established on such lot unless the Board of Adjustment has granted a variance from the applicable requirements of this Ordinance.*

Variance Review Criteria

This application must meet all five of the statutory tests for a **variance** (see Section 10.233 of the Zoning Ordinance):

1. *Granting the variance would not be contrary to the public interest.*
2. *Granting the variance would observe the spirit of the Ordinance.*
3. *Granting the variance would do substantial justice.*
4. *Granting the variance would not diminish the values of surrounding properties.*
5. *The "unnecessary hardship" test:*
   (a) The property has special conditions that distinguish it from other properties in the area.
   AND
   (b) Owing to these special conditions, a fair and substantial relationship does not exist between the general public purposes of the Ordinance provision and the specific application of that provision to the property; and the proposed use is a reasonable one.
   OR
   Owing to these special conditions, the property cannot be reasonably used in strict conformance with the Ordinance, and a variance is therefore necessary to enable a reasonable use of it.

10.235 Certain Representations Deemed Conditions

Representations made at public hearings or materials submitted to the Board by an applicant for a special exception or variance concerning features of proposed buildings,

structures, parking or uses which are subject to regulations pursuant to Subsection 10.232 or 10.233 shall be deemed conditions upon such special exception or variance.

SUPPLEMENTAL MEMORANDUM

TO: Portsmouth Zoning Board of Adjustment ("ZBA")
FROM: R. Timothy Phoenix, Esquire
Monica F. Kieser, Esquire
DATE: September 11, 2023
RE: Owners/Applicants: Peter Smith & Cynthia Austin Smith
Property: 9 Kent Street
Tax Map 113, Lot 42
General Residence A District

Dear Chair Eldridge and Members of the Zoning Board of Adjustment ("ZBA"):

On behalf of Owners/Applicants Peter Smith & Cynthia Austin Smith ("Smith"), we are pleased to submit this Supplemental Memorandum and Exhibits in support of a requested variance from the Portsmouth Zoning Ordinance ("PZO" or "Ordinance").

This matter was previously before the ZBA on August 22, 2023. After the public hearing, the ZBA began its deliberations. A majority of the ZBA voted to continue the matter to the next hearing and requested additional information from Smith. On August 29, 2023, Attorney Phoenix met with City Staff and received a list of questions, which Part One of this submission will address. Given the additional information submitted, we request that the ZBA reopen the public hearing to allow Smith the opportunity to address numerous public comments provided on August 22, 2023, questions relating to this information, or the questions regarding the Project as a whole.

PART ONE: SUBMISSION OF REQUESTED INFORMATION

I. REVISED/SUPPLEMENTAL EXHIBITS

H. 9/8/2023 – Revised Plan Set – Ambit Engineering | Haley Ward.
- Cover Page
- Standard Boundary & Topographic Survey
- C1 Demo Plan
- C2 Variance Plan
- C3 Grading & Drainage Plan
- L1 Landscaping Plan by Woodburn & Associates

I. Average Grade Calculations & Worksheet by Ambit Engineering | Haley Ward.
J. 9/8/2023 – Revised Architectural Plans – by Somma Studios.
K. Height Exhibit – by Somma Studios.
L. Renderings – by Tangram 3DS (To be submitted when complete).
M. Current side yard setback cured by dimensionally compliant proposal.
N. Photographs of other expanded neighborhood homes/garage under.
O. Example of effect on property values.

II. FREQUENTLY ASKED QUESTIONS

1.) What is the height, as defined by the Zoning Ordinance, of the structure to be demolished, relative to the calculated average existing grade?

Response: The survey completed by Ambit Engineering | Haley Ward identified the peak of the existing home to be at elevation 67.19 based on mean sea level data (hereinafter "sea level elevation") and the threshold elevation at 32.75. With this information, Architect Jennifer Ramsey then accounted for the front porch steps from the threshold to grade and concluded the height of the existing home is 39 ft. to the *peak of the roof*. The Ordinance requires measurement of height to the *mid-point of the roof*. Based on actual dimensions and Architect Jennifer Ramsey's identification of materials used, the height of the existing house as defined by the Ordinance is 31 ft. 1 5/8 in. or 31.14 ft.

2.) What is the height, defined by the Zoning Ordinance, of the proposed building and how was this calculated?

Response: Given the number of questions about this, we have endeavored to explain this issue more effectively, addressing height both as calculated by the zoning ordinance, and actual height of the structure from sea level.

The Ordinance definition of building height changed in October 2022. Previously, one would establish an average grade plane by taking measurements every five feet around the perimeter of the new home site, at a point six feet from the structure. Significant amendments now require determination of the average existing grade *and* the average finished grade, with measurements taken every five feet along the perimeter *where the grade meets the proposed structure*. The Ordinance now also requires the measurement of height to be from either average existing grade or average finished grade, *whichever is lower*. Measurement of the vertical distance to still depends on the type of roof. This methodology is derived from the amended definitions of building height, average existing grade, and average finished grade in PZO §10.1530.

As applied to the Project, the average *existing* grade is elevation 29.03; the average *finished* grade is slightly lower at elevation 28.37[1]. (EXHIBIT I). Accordingly,

[1] The lower average finished grade is a product of the excavation for the lower level garage, which will provide the required off-street parking currently lacking. Construction of the garage is described in greater detail *infra*.

measurement of distance is from elevation 28.37, which accounts for the proposed garage. The proposed home has a gabled roof, so measurement is to the midpoint of the roof, not its peak. Because the proposed home has dormers nestled in its gabled roof, we have taken the *most* conservative approach and measured to the midpoint of those dormers resulting in a zoning height of 34 ft. 8 in. or 34.67 ft.

As measured by the Ordinance, the height of the proposed structure is slightly taller than the existing structure. Importantly, the sea level elevation of the proposed home, 66.37 is .82 ft. lower than the existing home (67.19) and lower than the Mikolaites home, upgradient and at elevation 69.8. Why is the new home taller than the existing home as measured by the Ordinance but shorter than the existing home as measured from mean sea level data? The difference is that the existing home's front to back gabled roof is positioned over the side walls which have a 30 ft. span. In contrast, the proposed home has a side to side gabled roof positioned over the front and rear walls which have a 22 ft. span. The result is a more steeply pitched roof with a higher midpoint measurement. (EXHIBIT K).

3.) Why is the spa exempt from setback requirements?

Response: It is not exempt; it has a lesser setback requirement. City Staff have determined that the spa (hot tub) is an accessory structure. Pursuant to PZO §10.573.10, an accessory structure less than 10 ft. tall and less than 100 s.f. in area must be set back 5 ft. from any lot line (as opposed to the primary structure which requires a 10 ft. setback in the GRA district). The spa will be set into the ground protruding approximately 3 ft. and is 96 s.f. in area. Accordingly, it must comply with a 5 ft. setback. As proposed, the spa is 5.2 ft. from the side lot line and 5.2 ft. from the rear lot line and therefore compliant.

4.) How will the garage be built?

Response: The existing grade between the proposed garage location and the paved portion of Rockland Street varies between elevation 25 and elevation 28. The proposed driveway will slope away from the paved portion of the road from elevation 25 to elevation 23. Excavation is required to revise the grade from Rockland Street to the property line (just as all driveways property access points at a street) and then to the garage entry point at elevation 23. (EXHIBIT H).

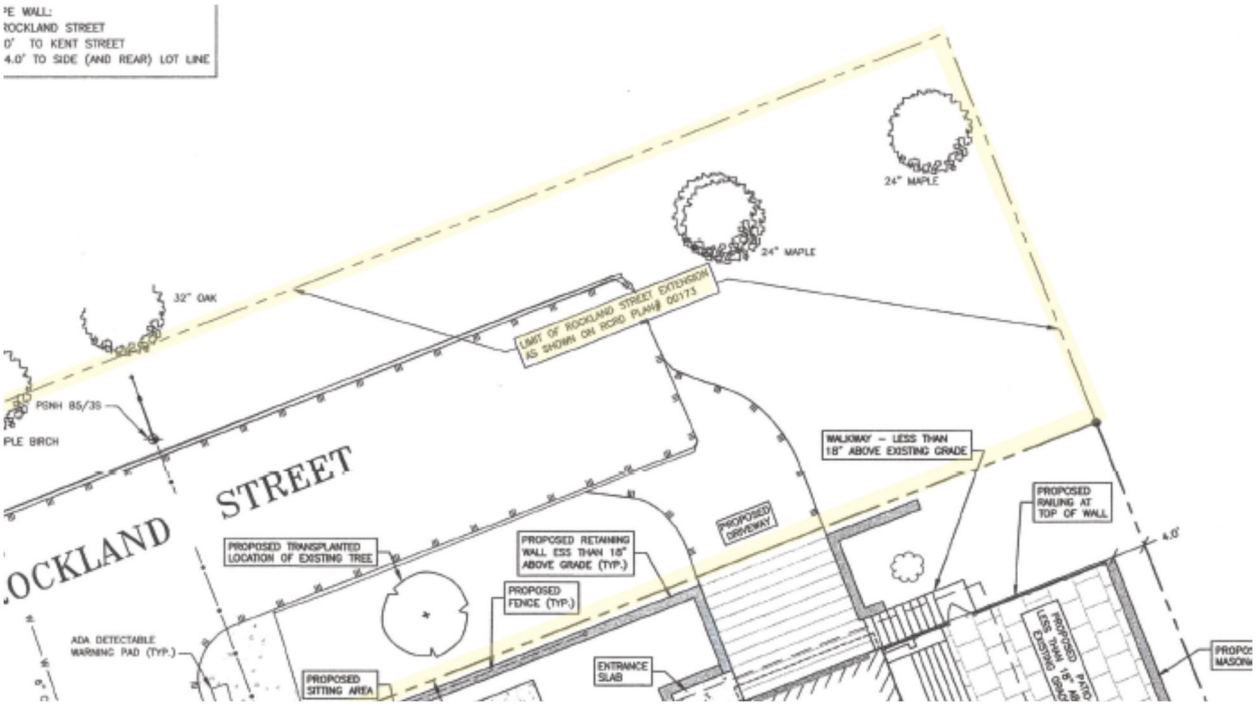
5.) Is Applicant proposing to use City property to a greater degree than other residents when pulling out of the garage?

Response: No. Members of the public erroneously fail to distinguish between Langdon Park/South Mill Playground and the Rockland Street Extension as laid out in the original subdivision plan. Langdon Park & South Mill Playground will not be affected by the Project. The Rockland Street Extension right-of-way is utilized as any other street that provides access to one's home.

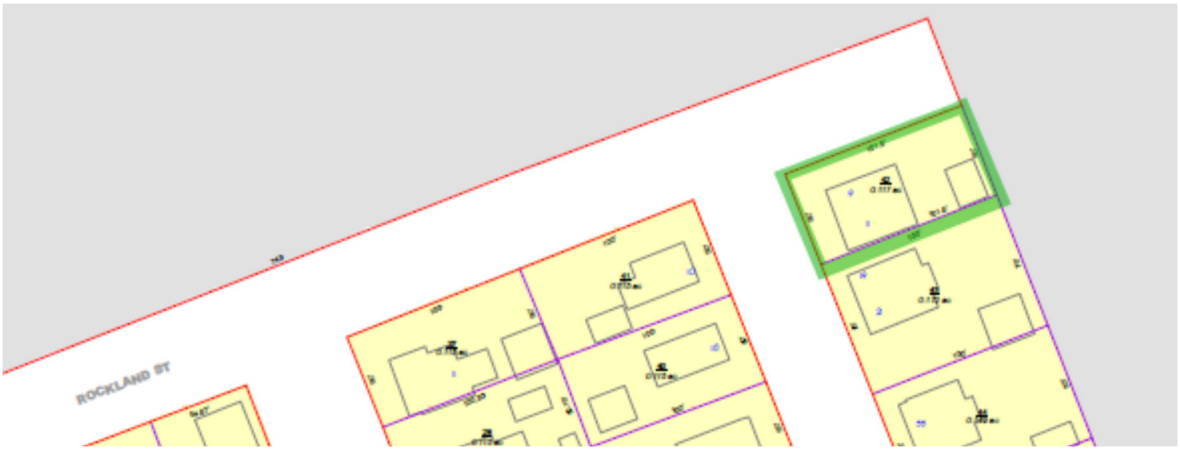
Portsmouth streets include a paved/traveled portion of the road for vehicles and additional space on either side to accommodate utilities and a sidewalk and/or greenspace. In Smith's neighborhood, the Kent Street and Rockland Street public *right of way* are each 50 ft. wide, though the traveled portion of the road is far less. As in any neighborhood, residents' drive from the street over a curb cut and sidewalk to access their lot. How much of any public right of way is sidewalk and grass depends entirely on the width of the paved portion of the road. The paved portion of Portsmouth Roads vary from 24 ft. - 32 ft., though Rockland Street Extension is 22 ft. wide. A narrow paved road leaves more room for utilities and a sidewalk/greenspace so the distance from the curb cut to one's driveway may be more, but it's all public right of way, whether it is road, curb cut, or sidewalk.

The Project calls for connecting his driveway at the terminus of the paved roadway, slightly expanding the paved portion of the road to accommodate the turning radius into the driveway. So, while access from the paved portion of Kent Street to the driveway is over the public right of way, this is the purpose of a public right of way. It is no different than any other driveway which utilizes the public right-of-way to accommodate the turning radius into one's lot into a driveway parking space, up/down into a garage.

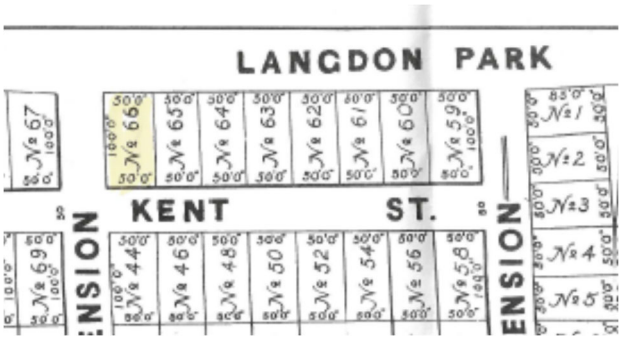
The issue causing confusion here is that not all of the Rockland Street public right of way is paved, leading some to question whether Smith will access his driveway over Langdon Park. He will not. The Rockland Street public right of way extends all the way to the end of Smith's lot as illustrated on the survey and highlighted in yellow:



In addition to the survey, the metes and bounds description of the Property in the deed chain states the property is bounded ±100 ft. by Rockland Street (or Rockland Street Extension) and 50 ft. by Langdon Park. See also the current tax map:



and the original 1899 Subdivision Plan for Alfred L. Elwyn:



Each illustration demonstrates that Langdon Park does not begin until the after Rockland Street has traversed the length of Smith's lot and the South Mill Playground does not begin at the edge of road pavement. Accordingly, there is no evidence that Langdon Park or the South Mill Playground are affected by the Project. The utilization of the public right-of-way for access to the lot and garage structure are no different than any other Portsmouth resident. (EXHIBIT N).

6.) What is the interior square footage of the proposed residence?

Response: The size and mass of a dimensionally compliant permitted single family home in the GRA district is not reviewable by the ZBA. See Part Two of this Memorandum *infra*. Assuming, arguendo that this is within the ZBA's purview, revised architectural plans (EXHIBIT J) demonstrate that the interior living space is 3,561 s.f.: which includes 577 s.f. finished basement area; 1,013 s.f. first floor; 1,114 s.f. second floor; and 857 s.f. third floor. According to the Tax Card, the existing home has 2,176 s.f. of living space; which includes a 240 s.f. finished attic space but no finished basement.

7.) Can you provide a survey plan that just shows the building envelope?

Response: Please see sheet C2 of the revised plan set from Ambit Engineering dated September 11, 2023. (EXHIBIT H). Sheet C2 clearly demonstrates all parts of the primary structure are confined to the permissible building envelope. City Staff have further confirmed that the landscape walls in the Kent and Rockland Street front yards under 18 inches in height are not structures. Similarly, the combination of low wall and short fence in the front yards do not exceed the permitted 4 foot height for fences in the principal front and secondary front yards. In the left side and rear yard setbacks, the combination masonry wall/fence do not exceed the permitted height of 6 feet applicable to fences in rear and side yards. The rear patio is also less than 18 inches above existing

grade and therefore not a structure. Lastly, as discussed *supra*, the spa is treated as an accessory structure and complies with the applicable 5 ft. setback.

8.) Can you provide a to-scale streetscape?

Response: Smith has engaged Tangram 3DS to provide the renderings requested by the ZBA. Noting that no zoning relief is required to accommodate the home and any improvements, these renderings with views of the proposed home from Kent and Rockland Streets, will plainly show that the proposed home fits into the neighborhood. (EXHIBIT L).

9.) Overall design, scale, and compatibility with the neighborhood.

As discussed at the previous meeting, the neighborhood includes several updated New Englander style homes on similar sized lots, new builds on subdivided/unmerged lots, as well as expanded homes on lots of all sizes. Many of these homes are larger than their earlier counterparts, overlook Langdon Park or the ballfields, and incorporate elements similar to the proposed design. Unlike what Smith proposes, several of these area homes required relief from yard setbacks or building coverage:

- **11 Elwyn Avenue: 80 ft. long structure set back 5 feet from the side lot line; 40% building coverage on a 5,000 s.f. lot. Approximately 50 of the 80 feet is the 2,440 s.f. home excluding an unfinished basement. (EXHIBIT N). Fence atop a tall concrete retaining wall. Overlooks park. This home is a stark contrast to our 56 ft. wide home which is 12 ft. from the side lot line and a significant improvement compared to existing conditions. (EXHIBIT M).**
    - **Notably, this expansive home had absolutely no negative effect on the values of the abutting properties, two of which sold recently for amounts in excess of a million dollars each. (Exhibit O).**
- **84 Rockland Street: 58 ft. long structure with 2,589 s.f. of living space which does not include habitable basement at this time. Variances for partial demolition, expansion of a nonconforming structure including dormer of third floor, 4 ft. and 8 ft. front yards where 15 ft. required, and 27% building coverage on a 5,488 s.f. lot. Overlooks park. (EXHIBIT N).**
- **55 Kent Street: long narrow New Englander; 22 ft. wide and 50 ft. long on a**

6,000 s.f. lot. The home has 2,540 s.f. of living space, excluding a 717 s.f. unfinished basement.

- **Note that 10 and 18 Kent Street, immediately across the street from the Project, are both New Englanders 22 ft. wide with detached garages 240 s.f. and 484 s.f. respectively. It is not unreasonable to expect that in the future, an owner may seek to expand these homes to incorporate garages with living space above. Any owner of a home on a nonconforming lot in this neighborhood is free to expand *conforming* parts of his or her home without a variance. It follows that Smith should be able to construct a new fully conforming home on a nonconforming lot (reducing density, vastly improving side yard setbacks and parking) without a variance.**

- **88 Lincoln Street: 58 ft. long home leaving a 3.7 ft. rear yard setback; 3,128 s.f. of living space excluding the unfinished basement; 35% of building coverage on a 5,127 s.f. lot.**
- **75 Kent Street: Two condominium units in a structure 60 ft. long rectangular structure on a 5,663 s.f. lot.**
- **24 Kent Street: 54 ft. long home constructed in 2002 on a 5,000 s.f. lot.**
- **31 Sherburne Avenue & 520 South Street: through on larger lots, are also examples of large homes that have been expanded over the years, note the drive under garage serving 520 South Street, which is accessed from Sherburne.**
- **57 Sherburne: This lot is under 3,000 s.f. but was separated from an existing larger lot and the ZBA granted yard setback variances and coverage relief (31% where 25% is required) to accommodate construction of a new home.**
- **Garage under: There are six examples of garage under homes in the area at 520 South, 37 Sherburne; 15 Haven incorporates a slope down from the paved portion of South Street, as does 161 Elwyn and 181 Elwyn; see also 171 Elwyn. (Latter half of EXHIBIT N).**

The above, in conjunction with the photographs and street scape depict an evolving neighborhood where significant investment in real estate is accompanied by significant

renovation and redevelopment. Because this neighborhood, and indeed most of Portsmouth, is outside the Historic District, the Ordinance does not circumscribe the aesthetics, shape, design, or massing of any such expansion or redevelopment. Regulation is limited to the dimensional requirements which are met by the Project, except for the lot size which is a prior nonconforming condition impossible to remedy.

PART TWO: SUPPLEMENTAL LEGAL ARGUMENT

A. The scope of the ZBA's review is limited.

It has been suggested that the ZBA has the authority to conserve historic structures and/or should fashion conditions to the Project limiting the size of the proposed home given the lot size and lot size/dwelling unit relief requested. Both assertions are contrary to state law and the Portsmouth Zoning Ordinance.

RSA 674:16 enables municipalities to enact zoning ordinances that regulate *uses* of property; the height, number of stories, size and location of buildings and structures on a lot; and yard size, lot coverage, and density. Portsmouth subsequently enacted those regulations and each one is met by the Project save the lot size and lot size/dwelling unit requirement, which cannot be remedied beyond the significant reduction in density by the removal of a unit. State law also dictates the powers of the ZBA to entertain administrative appeals and grant special exceptions, equitable waivers, or variances if the statutory criteria are satisfied. RSA 674:33. This includes authorization of a variance from the requirements of the Ordinance if:

a. The variance will not be contrary to the public interest
b. Granting the variance observes the spirit of the ordinance
c. Substantial justice will be done by granting the variance
d. Granting the variance will not diminish surrounding property values
e. Special conditions exist such that literal enforcement of the provisions of the ordinance results in unnecessary hardship.

RSA 674:33, I(a)(2); The Board of Adjustment in NH; PP 11-9, 10 (2022) (emphasis added). See also Harborside Associates, L. P. v. The Parade Residence Hotel, LLC. 162 NH 508 (2011).

The variances requested by Smith (lot size and lot size/dwelling unit) are the sole matters before the ZBA. Simply put, it is the variances, not the Project, which must meet the criteria of RSA 674:33, I(a)(2). The plain language of RSA 674:16 and 674:33 do not confer authority upon the ZBA to adjudicate the design, features, materials, and aesthetics of the proposed home. Similarly, dimensional aspects of the proposed home which require no variance (height, building

and lot coverage, yards) and design are not subject to review by the ZBA merely because a variance for lot size or lot size/dwelling unit is required.

An owner of a nonconforming home on a nonconforming lot can expand conforming parts of the structure without any variance or review by the ZBA. §PZO 10.321. Accordingly, Smith could remove his garage and construct a conforming addition as long and as tall as the dimensional requirements permit without any variance whatsoever. The same result should be required here, where Smith will remove a significantly nonconforming duplex structure **(EXHIBIT M)** on a substandard lot with no parking and replace it with a permitted fully dimensionally compliant single family home with incorporated parking.

The Ordinance is the overarching regulation informing the activities of at least three land use boards: the ZBA, the Planning Board, and the Historic District Commission. Furthermore, the establishment of Historic District Commissions (HDC) is also a result of RSA 674:46, which enables a municipality to layout and define a historic district. However, it is *only within a historic district* that the municipality, *through the HDC*, can regulate the construction, demolition, alteration, or repair of such structures. See also PZO §10.631. As a matter of law, general language in the Ordinance regarding the preservation of the historic district, and buildings or structures of historic or architectural interest does not confer authority upon the ZBA to entertain those items in contravention of RSA 674:33 nor does it confer any board with the authority to regulate design features of a new home outside a Historic District when it conforms with all other dimensional requirements. Accordingly, the ZBA's focus on the size and design of the dimensionally compliant residence in a residential zone is misplaced.

The ZBA does have the authority to adjudicate matters *within its jurisdiction* and this includes the authority to attach reasonable conditions to any variance approval when necessary to preserve the spirit of the Ordinance. (emphasis added). Vlahos Realty Company v. Little Boar's Head District, 101 N.H. 460(1957); See also PZO §10.233.70. All of the variance criteria are met by the Project which radically improves lot size/dwelling unit *and* parking with a 50% reduction from two dwellings (with no off street parking where four spaces are required) to one dwelling requiring two off street parking spaces which are provided. The Project significantly improves existing conditions by proposing a compliant home greatly increasing air, light, space, and separation between neighbors where none now exist. The Project reduces building coverage from 35% to a compliant 25%. At 42%, open space is well above the minimum 30%. Height is

conservatively measured and compliant as discussed in detail *supra*. Accordingly, there are no reasonable conditions within the ZBA's authority which are necessary to preserve the spirit of the Ordinance or meet any of the other statutory criteria. Furthermore, the ZBA is without the authority to go beyond the Ordinance and regulate building design and mass, or impose greater dimensional requirements. The building envelope is proportionately tied to the size of the lot so by complying dimensionally with a 5,000 s.f. lot, the structure Project is already proportionate to the lot. Clearly, the Project complies with all dimensional requirements save the lot size and lot size/dwelling unit which cannot be remedied by any conditions.

III. CONCLUSION

For these reasons, Peter and Cynthia Smith respectfully request that the Portsmouth Zoning Board of Adjustment the requested lot size/lot size per dwelling unit variance.

Respectfully submitted,
Peter Smith & Cynthia Austin Smith

By: _____
R. Timothy Phoenix, Esquire
Monica F. Kieser, Esquire

STRUCTURE REPLACEMENT

SMITH RESIDENCE

9 - 11 KENT STREET, PORTSMOUTH, NEW HAMPSHIRE

PERMIT PLANS

EXHIBIT H

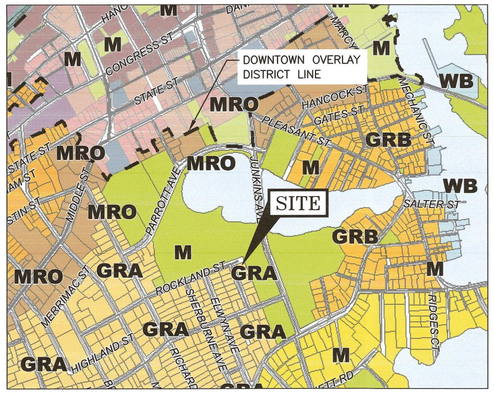
OWNER & APPLICANT:
CYNTHIA AUSTIN SMITH &
PETER SMITH
9 KENT STREET
PORTSMOUTH, NH 03801
(617) 803-2109

CIVIL ENGINEER & LAND SURVEYOR:
AMBIT ENGINEERING, INC.
200 GRIFFIN ROAD, UNIT 3
PORTSMOUTH, N.H. 03801
TEL. (603) 430-9282
FAX (603) 436-2315

ATTORNEY:
HOEFLE, PHOENIX, GORMLEY & ROBERTS, PLLC
127 PARROTT AVENUE
PORTSMOUTH, NH 03801
TEL. (603) 436-0666
FAX (603) 431-0879

LANDSCAPE ARCHITECT:
WOODBURN & COMPANY LANDSCAPE ARCHITECTURE, LLC
103 KENT PLACE
NEWMARKET, N.H. 03857
TEL. (603) 659-5949
FAX (603) 659-5939

ARCHITECT:
SOMMA STUDIOS
30 MAPLEWOOD AVENUE
PORTSMOUTH NH 03801
TEL. (617) 766-3760
FAX (617) 766-3761

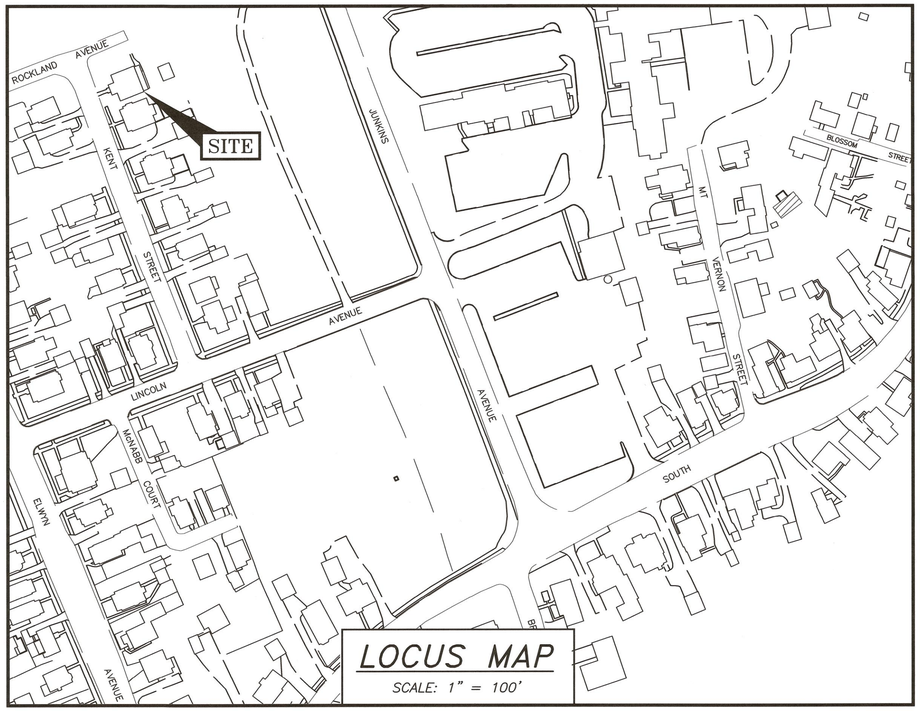


Legend

Character Districts
Character-Based Zoning Area (Refer to Zoning Map Sheet 2 of 2 Character Districts Regulating Plan)

Residential Districts

R	Rural
SRA	Single Residence A
SRB	Single Residence B
GRA	General Residence A
GRB	General Residence B
GRC	General Residence C
GA/MH	Garden Apartment/Mobile Home Park



LOCUS MAP
SCALE: 1" = 100'

PERMIT LIST:
PORTSMOUTH ZONING BOARD: PENDING
PORTSMOUTH DRIVEWAY PERMIT: PENDING
PORTSMOUTH TREES AND GREENERY: PENDING

LEGEND:

EXISTING	PROPOSED	
		PROPERTY LINE
		SETBACK
S	S	SEWER PIPE
SL	SL	SEWER LATERAL
G	G	GAS LINE
D	D	STORM DRAIN
W	W	WATER LINE
WS	WS	WATER SERVICE
UGE	UGE	UNDERGROUND ELECTRIC
OHW	OHW	OVERHEAD ELECTRIC/WIRES
	UD	FOUNDATION DRAIN
		EDGE OF PAVEMENT (EP)
100	100	CONTOUR
97x3	98x0	SPOT ELEVATION
		UTILITY POLE
		WALL MOUNTED EXTERIOR LIGHTS
		TRANSFORMER ON CONCRETE PAD
		ELECTRIC HANDHOLD
WS SG	WS SG	SHUT OFFS (WATER/GAS)
	GV	GATE VALVE
	HYD	HYDRANT
CB	CB	CATCH BASIN
S	SMH	SEWER MANHOLE
D	DMH	DRAIN MANHOLE
T	TMH	TELEPHONE MANHOLE
14	14	PARKING SPACE COUNT
PM		PARKING METER
LSA		LANDSCAPED AREA
TBD	TBD	TO BE DETERMINED
CI	CI	CAST IRON PIPE
COP	COP	COPPER PIPE
DI	DI	DUCTILE IRON PIPE
PVC	PVC	POLYVINYL CHLORIDE PIPE
RCP	RCP	REINFORCED CONCRETE PIPE
AC	–	ASBESTOS CEMENT PIPE
VC	VC	VITRIFIED CLAY PIPE
EP	EP	EDGE OF PAVEMENT
EL.	EL.	ELEVATION
FF	FF	FINISHED FLOOR
INV	INV	INVERT
S =	S =	SLOPE FT/FT
TBM	TBM	TEMPORARY BENCH MARK
TYP	TYP	TYPICAL

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INDEX OF SHEETS

DWG No.	
–	STANDARD BOUNDARY AND TOPOGRAPHIC SURVEY
C1	DEMO PLAN
C2	VARIANCE PLAN
C3	GRADING PLAN
L1	LANDSCAPE PLAN

UTILITY CONTACTS

ELECTRIC:
EVERSOURCE
1700 LAFAYETTE ROAD
PORTSMOUTH, N.H. 03801
Tel. (603) 436-7708, Ext. 555.5678
ATTN: MICHAEL BUSBY, P.E. (MANAGER)

SEWER & WATER:
PORTSMOUTH DEPARTMENT OF PUBLIC WORKS
680 PEVERLY HILL ROAD
PORTSMOUTH, N.H. 03801
Tel. (603) 427-1530
ATTN: JIM TOW

NATURAL GAS:
UNITIL
325 WEST ROAD
PORTSMOUTH, N.H. 03801
Tel. (603) 294-5144
ATTN: DAVE BEAULIEU

COMMUNICATIONS:
FAIRPOINT COMMUNICATIONS
JOE CONSIDINE
1575 GREENLAND ROAD
GREENLAND, N.H. 03840
Tel. (603) 427-5525

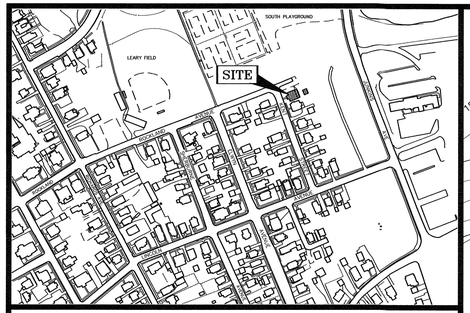
CABLE:
COMCAST
155 COMMERCE WAY
PORTSMOUTH, N.H. 03801
Tel. (603) 679-5695 (X1037)
ATTN: MIKE COLLINS

STRUCTURE REPLACEMENT
SMITH RESIDENCE
9 - 11 KENT STREET
PORTSMOUTH, N.H.

AMBIT ENGINEERING, INC.
Civil Engineers & Land Surveyors
200 Griffin Road – Unit 3
Portsmouth, N.H. 03801-7114
Tel (603) 430-9282
Fax (603) 436-2315

PLAN SET SUBMITTAL DATE: 8 SEPTEMBER 2023

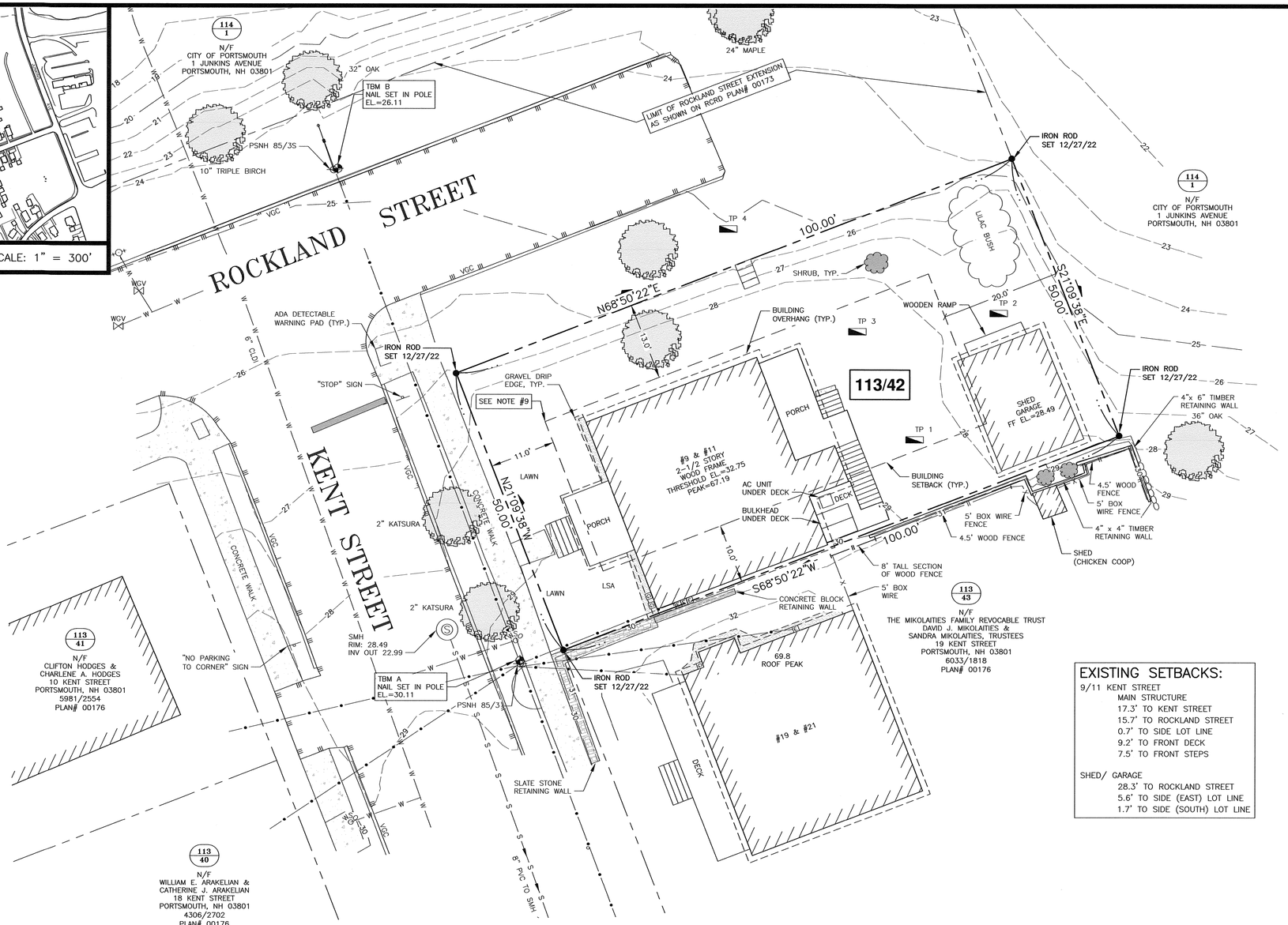
P:\MHS\01\0188-Peter_Smith\3492-Kent St., Portsmouth-JRC\3492\2022 Survey\Plans & Specs\Smith3492 Cover 2023.dwg, 9/11/2023 10:26:46 AM, Portsmouth Plotter Canon TX3000.pc3



LOCATION MAP SCALE: 1" = 300'

LEGEND:

N/F	NOW OR FORMERLY
RP	RECORD OF PROBATE
RCRD	ROCKINGHAM COUNTY REGISTRY OF DEEDS
11/21	MAP 11 / LOT 21
	BOUNDARY
	SETBACK
	RAILROAD SPIKE FOUND/SET
	IRON ROD/ PIPE FOUND
	DRILL HOLE FOUND/SET
S	SEWER LINE
G	GAS LINE
D	STORM DRAIN
W	WATER LINE
	OVERHEAD ELECTRIC/WIRES
100	CONTOUR
97x3	SPOT ELEVATION
	EDGE OF PAVEMENT (EP)
	WOODS / TREE LINE
	UTILITY POLE (w/ GUY)
GSO	GAS SHUT OFF
WSO	WATER SHUT OFF/CURB STOP
GV	GATE VALVE
	HYDRANT
E	METER (GAS, WATER, ELECTRIC)
S	SEWER MANHOLE
	SIGNS
EL.	ELEVATION
FF	FINISHED FLOOR
TBM	TEMPORARY BENCHMARK
TYP.	TYPICAL
VGC	VERTICAL GRANITE CURB
CCB	CAPE COD BERM
LSA	LANDSCAPED AREA



EXISTING SETBACKS:

9/11 KENT STREET
- MAIN STRUCTURE
- 17.3' TO KENT STREET
- 15.7' TO ROCKLAND STREET
- 0.7' TO SIDE LOT LINE
- 9.2' TO FRONT DECK
- 7.5' TO FRONT STEPS

SHED/ GARAGE
- 28.3' TO ROCKLAND STREET
- 5.6' TO SIDE (EAST) LOT LINE
- 1.7' TO SIDE (SOUTH) LOT LINE

PLAN REFERENCES:

1) PLAN OF A LOT OF LAND OWNED BY ALFRED L. ELWYN PORTSMOUTH N.H. COMPILED FROM A SURVEY MADE 1899 BY A.C. HOYT C.E. RCRD PLAN# 00176.

2) STANDARD BOUNDARY SURVEY TAX MAP 113 – LOT 45 OWNER: MICHAEL T. ROCHE & SUSAN L. JAVUREK, PROPERTY LOCATED AT 45 KENT STREET, CITY OF PORTSMOUTH, COUNTY OF ROCKINGHAM, STATE OF NEW HAMPSHIRE, SCALE: 1" = 10', DATED: MAY 2002, NOT RECORDED

"I CERTIFY THAT THIS PLAN WAS PREPARED UNDER MY DIRECT SUPERVISION, THAT IT IS THE RESULT OF A FIELD SURVEY BY THIS OFFICE AND HAS AN ACCURACY OF THE CLOSED TRAVERSE THAT EXCEEDS THE PRECISION OF 1:15,000."

9.8.23

JOHN R. CHAGNON, LLS #738 DATE

STATE OF NEW HAMPSHIRE No. 738 JOHN R. CHAGNON LICENSED LAND SURVEYOR

GRAPHIC SCALE

10 5 0 10 20 30 40 FEET
3 0 5 10 METERS

TEST PIT #1

Date:	11/3/22
Logged by:	STEVEN D. RIKER
ESHWT:	34"
Observed Water:	NONE
Restrictive layer:	NONE
REFUSAL:	NONE TO 66"
Percolation rate:	10 min./inch

DEPTH	DESCRIPTION
0" – 8"	10 YR 3/2 FINE SANDY LOAM, GRANULAR, FRIABLE
0" – 21"	10 YR 4/3 FINE SANDY LOAM, GRANULAR, FRIABLE
21" – 34"	ASH LAYER
34" – 53"	10 YR 3/4 FINE SANDY LOAM, GRANULAR, FRIABLE
53" – 61"	10 YR 4/6 FINE SANDY LOAM, GRANULAR, FRIABLE
61" – 66"	2.5 YR 5/4 FINE SANDY LOAM, GRANULAR, FRIABLE

TEST PIT #2

Date:	11/3/22
Logged by:	STEVEN D. RIKER
ESHWT:	57"
Observed Water:	NONE
Restrictive layer:	NONE
REFUSAL:	NONE TO 75"
Percolation rate:	10 min./inch

DEPTH	DESCRIPTION
0" – 6"	10 YR 3/3 FINE SANDY LOAM, GRANULAR, FRIABLE
6" – 26"	10 YR 4/3 FINE SANDY LOAM, GRANULAR, FRIABLE
26" – 57"	ASH LAYER
57" – 75"	10 YR 5/4 FINE SANDY LOAM, GRANULAR, FRIABLE

TEST PIT #3

Date:	11/3/22
Logged by:	STEVEN D. RIKER
ESHWT:	55"
Observed Water:	NONE
Restrictive layer:	NONE
REFUSAL:	NONE TO 75"
Percolation rate:	10 min./inch

DEPTH	DESCRIPTION
0" – 37"	10 YR 3/3 FINE SANDY LOAM, GRANULAR, FRIABLE
37" – 55"	ASH LAYER
55" – 75"	10 YR 5/4 FINE SANDY LOAM, GRANULAR, FRIABLE

TEST PIT #4

Date:	11/3/22
Logged by:	STEVEN D. RIKER
ESHWT:	56"
Observed Water:	NONE
Restrictive layer:	PAN AT 56"
REFUSAL:	NONE TO 56"
Percolation rate:	10 min./inch

DEPTH	DESCRIPTION
0" – 5"	10 YR 4/3 FINE SANDY LOAM, GRANULAR, FRIABLE
5" – 18"	ASH LAYER
18" – 27"	10 YR 4/4 FINE SANDY LOAM, GRANULAR, FRIABLE
27" – 56"	2.5 YR 4/4 FINE SANDY LOAM, GRANULAR, FRIABLE
56" – 71"	2.5 YR 4/3 FINE SANDY LOAM, GRANULAR, FRIABLE

AMBIT ENGINEERING, INC.
Civil Engineers & Land Surveyors
200 Griffin Road – Unit 3
Portsmouth, N.H. 03801-7114
Tel (603) 430-9282
Fax (603) 436-2315

NOTES:

1) PARCEL IS SHOWN ON THE CITY OF PORTSMOUTH ASSESSOR'S MAP 113 AS LOT 42.

2) OWNERS OF RECORD:
CYNTHIA AUSTIN SMITH &
PETER SMITH
9 KENT STREET
PORTSMOUTH, NH 03801
6358/448
PLAN# 00176

3) PARCEL IS NOT IN A FLOOD HAZARD ZONE AS SHOWN ON FIRM PANEL 33015C0259F, DATED 1/29/2021.

4) EXISTING LOT AREA:
5,000 S.F.
0.1148 ACRES

5) PARCEL IS LOCATED IN THE GENERAL RESIDENCE A (GRA) DISTRICT.

6) DIMENSIONAL REQUIREMENTS:

MIN. LOT AREA:	7,500 S.F.
FRONTAGE:	100 FEET
SETBACKS:	
FRONT:	15 FEET
SIDE:	10 FEET
REAR:	20 FEET
MAXIMUM STRUCTURE HEIGHT:	35 FEET
MAXIMUM BUILDING COVERAGE:	25%
MINIMUM OPEN SPACE:	30%

7) THE PURPOSE OF THIS PLAN IS TO SHOW THE RESULTS OF A STANDARD BOUNDARY AND TOPOGRAPHIC SURVEY OF ASSESSOR'S MAP 113, LOT 42 IN THE CITY OF PORTSMOUTH.

8) VERTICAL DATUM IS NAVD88. BASIS OF VERTICAL DATUM IS REDUNDANT RTN GNSS OBSERVATIONS.

9) IN ACCORDANCE WITH THE PORTSMOUTH ZONING ORDINANCE, ARTICLE 5, SECTION 10.516 FRONT YARD EXCEPTION FOR EXISTING ALIGNMENTS: THE AVERAGE FRONT SETBACK FOR LOT 113/42 ON KENT STREET IS 10' AND AVERAGE FRONT SETBACK ON ROCKLAND STREET IS 13'. MEASUREMENT TO STRUCTURES 18" ABOVE GRADE.

NO.	DESCRIPTION	DATE
4	ADD ABUTTER ROOF PEAK	9/8/23
3	ISSUED FOR APPROVAL	2/7/23
2	MONUMENTS SET	12/27/22
1	TEST PIT INFORMATION	11/10/22
0	ISSUED FOR COMMENT	7/13/22

REVISIONS

STANDARD BOUNDARY & TOPOGRAPHIC SURVEY TAX MAP 113 – LOT 42

OWNER:

CYNTHIA AUSTIN SMITH & PETER SMITH

9–11 KENT STREET
CITY OF PORTSMOUTH
COUNTY OF ROCKINGHAM
STATE OF NEW HAMPSHIRE

SCALE: 1" = 10' *JUNE 2022*

FB 301 PG 45 3492

P:\NH\50108-Peter_Smith\3492-Kent St, Portsmouth-JRC\3492\2022 Survey\Plans & Specs\Site\3492 Survey 2022.dwg, 9/11/2023 10:20:28 AM, Portsmouth Plotter Canon TX3000.pc3

DEMOLITION NOTES

A) THE LOCATIONS OF UNDERGROUND UTILITIES ARE APPROXIMATE AND THE LOCATIONS ARE NOT GUARANTEED BY THE OWNER OR THE DESIGNER. IT IS THE CONTRACTORS' RESPONSIBILITY TO LOCATE UTILITIES AND ANTICIPATE CONFLICTS. CONTRACTOR SHALL REPAIR EXISTING UTILITIES DAMAGED BY THEIR WORK AND RELOCATE EXISTING UTILITIES THAT ARE REQUIRED TO BE RELOCATED PRIOR TO COMMENCING ANY WORK IN THE IMPACTED AREA OF THE PROJECT.

B) ALL MATERIALS SCHEDULED TO BE REMOVED SHALL BECOME THE PROPERTY OF THE CONTRACTORS UNLESS OTHERWISE SPECIFIED. THE CONTRACTOR SHALL DISPOSE OF ALL MATERIALS OFF-SITE IN ACCORDANCE WITH ALL FEDERAL, STATE, AND LOCAL REGULATIONS, ORDINANCES AND CODES. THE CONTRACTOR SHALL COORDINATE REMOVAL, RELOCATION, DISPOSAL, OR SALVAGE OF UTILITIES WITH THE OWNER AND APPROPRIATE UTILITY COMPANY.

C) ANY EXISTING WORK OR PROPERTY DAMAGED OR DISRUPTED BY CONSTRUCTION/ DEMOLITION ACTIVITIES SHALL BE REPLACED OR REPAIRED TO THE ORIGINAL EXISTING CONDITIONS BY THE CONTRACTOR AT NO ADDITIONAL COST TO THE OWNER.

D) THE CONTRACTOR SHALL VERIFY LOCATION OF ALL EXISTING UTILITIES AND CALL DIG SAFE AT LEAST 72 HOURS PRIOR TO THE COMMENCEMENT OF ANY DEMOLITION/CONSTRUCTION ACTIVITIES.

E) SAWCUT AND REMOVE PAVEMENT ONE FOOT OFF PROPOSED EDGE OF PAVEMENT TRENCH IN AREAS WHERE PAVEMENT IS TO BE REMOVED.

F) IT IS THE CONTRACTOR'S RESPONSIBILITY TO FAMILIARIZE THEMSELVES WITH THE CONDITIONS OF ALL THE PERMIT APPROVALS.

G) THE CONTRACTOR SHALL OBTAIN AND PAY FOR ADDITIONAL CONSTRUCTION PERMITS, NOTICES AND FEES NECESSARY TO COMPLETE THE WORK AND ARRANGE FOR AND PAY FOR ANY INSPECTIONS AND APPROVALS FROM THE AUTHORITIES HAVING JURISDICTION. THE CONTRACTOR SHALL BE RESPONSIBLE FOR ANY ADDITIONAL AND OFF-SITE DISPOSAL OF MATERIALS REQUIRED TO COMPLETE THE WORK.

H) THE CONTRACTOR SHALL REMOVE AND DISPOSE OF ALL EXISTING STRUCTURES, CONCRETE, UTILITIES, VEGETATION, PAVEMENT, AND CONTAMINATED SOIL WITHIN THE WORK LIMITS SHOWN UNLESS SPECIFICALLY IDENTIFIED TO REMAIN. ANY EXISTING DOMESTIC / IRRIGATION SERVICE WELLS IN THE PROJECT AREA IDENTIFIED DURING THE CONSTRUCTION AND NOT CALLED OUT ON THE PLANS SHALL BE BROUGHT TO THE ATTENTION OF THE OWNER AND ENGINEER FOR PROPER CAPPING / RE-USE.

I) ALL WORK WITHIN THE CITY OF PORTSMOUTH RIGHT OF WAY SHALL BE COORDINATED WITH THE CITY OF PORTSMOUTH DEPARTMENT OF PUBLIC WORKS (DPW).

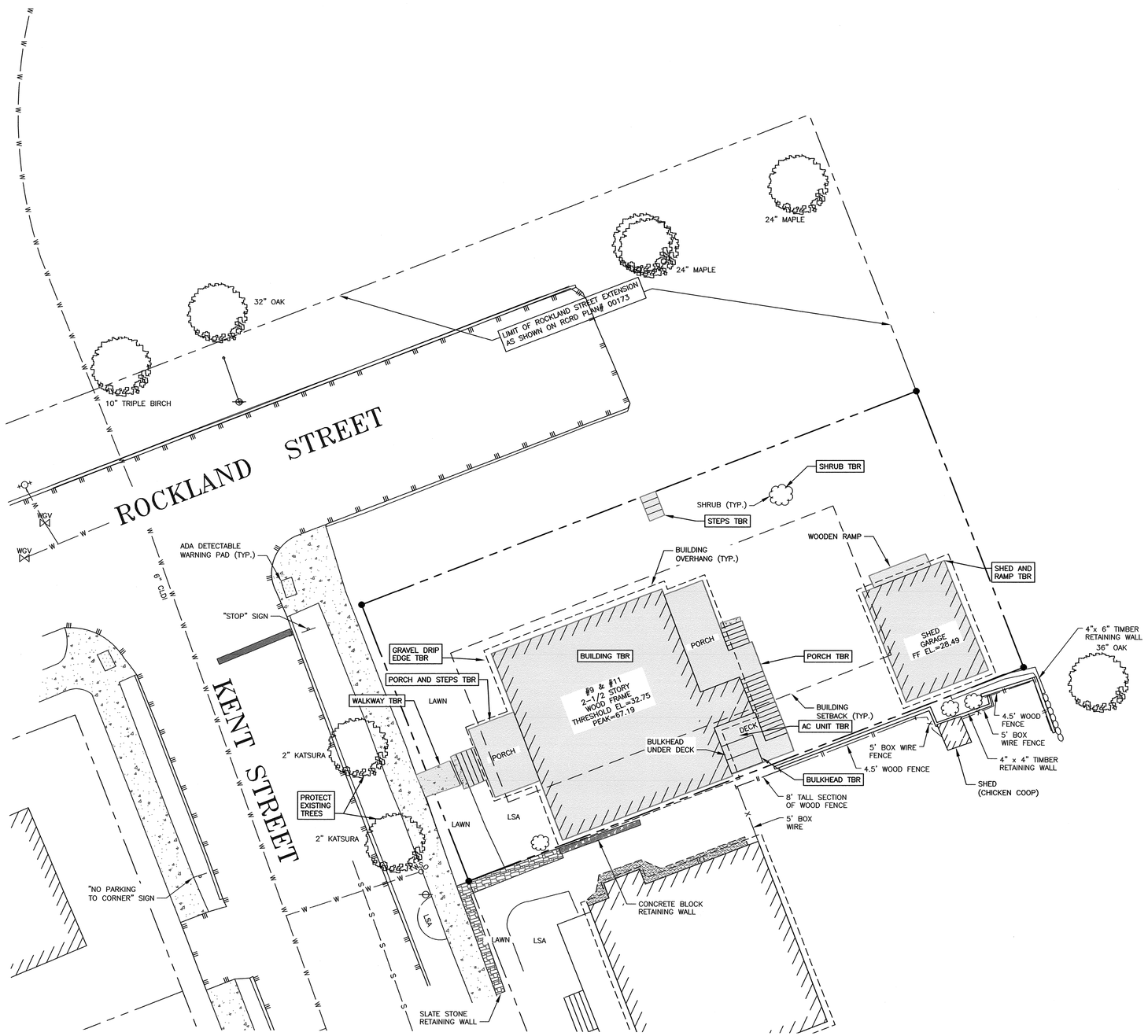
J) REMOVE TREES AND BRUSH AS REQUIRED FOR COMPLETION OF WORK. CONTRACTOR SHALL GRUB AND REMOVE ALL SLUMPS WITHIN LIMITS OF WORK AND DISPOSE OF OFF-SITE IN ACCORDANCE WITH FEDERAL, STATE, AND LOCAL LAWS AND REGULATIONS.

K) CONTRACTOR SHALL PROTECT ALL PROPERTY MONUMENTATION THROUGHOUT DEMOLITION AND CONSTRUCTION OPERATIONS. SHOULD ANY MONUMENTATION BE DISTURBED, THE CONTRACTOR SHALL EMPLOY A NH LICENSED LAND SURVEYOR TO REPLACE THEM.

L) PROVIDE INLET PROTECTION BARRIERS AT ALL CATCH BASINS WITHIN CONSTRUCTION LIMITS AND MAINTAIN FOR THE DURATION OF THE PROJECT. INLET PROTECTION BARRIERS SHALL BE HIGH FLOW SILT SACK BY ACF ENVIRONMENTAL OR APPROVED EQUAL. INSPECT BARRIERS WEEKLY AND AFTER EACH RAIN OF 0.25 INCHES OR GREATER. CONTRACTOR SHALL COMPLETE A MAINTENANCE INSPECTION REPORT AFTER EACH INSPECTION. SEDIMENT DEPOSITS SHALL BE REMOVED AFTER EACH STORM EVENT OR MORE OFTEN IF WARRANTED OR FABRIC BECOMES CLOGGED. EROSION CONTROL MEASURES SHALL BE INSTALLED PRIOR TO THE START OF ANY CLEARING OR DEMOLITION ACTIVITIES.

M) THE CONTRACTOR SHALL PAY ALL COSTS NECESSARY FOR TEMPORARY PARTITIONING, BARRICADING, FENCING, SECURITY AND SAFELY DEVICES REQUIRED FOR THE MAINTENANCE OF A CLEAN AND SAFE CONSTRUCTION SITE.

N) ANY CONTAMINATED MATERIAL REMOVED DURING THE COURSE OF THE WORK WILL REQUIRE HANDLING IN ACCORDANCE WITH NHDES REGULATIONS. CONTRACTOR SHALL HAVE A HEALTH AND SAFETY PLAN IN PLACE, AND COMPLY WITH ALL APPLICABLE PERMITS, APPROVALS, AUTHORIZATIONS, AND REGULATIONS



GRAPHIC SCALE

10 5 0 10 20 30 40 FEET
3 0 5 10 METERS

AMBIT ENGINEERING, INC.
A DIVISION OF HALEY WARD, INC.
200 Griffin Road, Unit 3
Portsmouth, NH 03801
603.430.9282
WWW.HALEYWARD.COM

NOTES:

1) THE CONTRACTOR SHALL NOTIFY DIG SAFE AT 1-888-DIG-SAFE (1-888-344-7233) AT LEAST 72 HOURS PRIOR TO COMMENCING ANY EXCAVATION ON PUBLIC OR PRIVATE PROPERTY WITHIN 100 FEET OF UNDERGROUND UTILITIES. THE EXCAVATOR IS RESPONSIBLE TO MAINTAIN MARKS. DIG SAFE TICKETS EXPIRE IN THIRTY DAYS.

2) UNDERGROUND UTILITY LOCATIONS ARE BASED UPON BEST AVAILABLE EVIDENCE AND ARE NOT FIELD VERIFIED. LOCATING AND PROTECTING ANY ABOVEGROUND OR UNDERGROUND UTILITIES IS THE SOLE RESPONSIBILITY OF THE CONTRACTOR AND/OR THE OWNER. UTILITY CONFLICTS SHOULD BE REPORTED AT ONCE TO THE DESIGN ENGINEER.

3) CONTRACTOR SHALL INSTALL AND MAINTAIN EROSION CONTROL MEASURES IN ACCORDANCE WITH THE "NEW HAMPSHIRE STORMWATER MANUAL, VOLUME 3, EROSION AND SEDIMENT CONTROLS DURING CONSTRUCTION. (NHDES DECEMBER 2008).

SMITH RESIDENCE
9 KENT STREET
PORTSMOUTH, N.H.

NO.	DESCRIPTION	DATE
0	ISSUED FOR APPROVAL	7/19/23

REVISIONS

JOHN R. CHAGNON No. 7851 LICENSED PROFESSIONAL ENGINEER STATE OF NEW HAMPSHIRE

SCALE: 1" = 10' JULY 2023

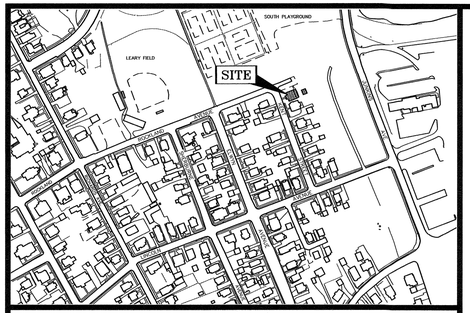
DEMO PLAN

C1

FB 301 PG 45

3492

P:\NH\55\197.98-Peter_Smith\3492-Kent St, Portsmouth-ABC\3492\2023 Survey\Plans & Specs\Site\3492 Site 2023.dwg, 7/14/2023 12:00:33 PM, Portsmouth Plotter Canon TX3000 (temporary).ctb



LOCATION MAP SCALE: 1" = 300'

PROPOSED SETBACKS:

9 & 11 KENT STREET
MAIN STRUCTURE
14.0' TO KENT STREET
16.0' TO ROCKLAND STREET
12.0' TO SIDE (SOUTH) LOT LINE
11.0' TO FRONT (KENT) STEPS

LANDSCAPE WALL:
1.0' TO ROCKLAND STREET
0' TO KENT STREET
4.0' TO SIDE (AND REAR) LOT LINE

IMPERVIOUS SURFACE AREAS
(TO PROPERTY LINE)

STRUCTURE	PRE-CONSTRUCTION IMPERVIOUS (S.F.)	POST-CONSTRUCTION IMPERVIOUS (S.F.)
MAIN STRUCTURE	1,075	1,122
GARAGE/SHED	296	0
PORCHES/DECKS/PATIOS/SPA	315	741
STAIRS/RAMP/LANDINGS	111	178
CONCRETE/UTILITY PADS	27	36
DRIVEWAY	0	265
RETAINING WALLS	0	236
WINDOW WELL	0	4
WALKWAYS & SITTING AREA	0	306
TOTAL	1,824	2,888
LOT SIZE	5,000	5,000
% LOT COVERAGE	36.5%	57.8%

EXISTING BUILDING COVERAGE:

MAIN STRUCTURE	1,075 S.F.
GARAGE/SHED	296 S.F.
PORCH/DECKS	315 S.F.
STEPS OVER 18" AG	
FRONT PORCH STEPS	9 S.F.
BACK PORCH/DECK STEPS	52 S.F.
TOTAL	1,747 S.F.

BUILDING COVERAGE: 1,747/5000 = 35%

PROPOSED BUILDING COVERAGE:

MAIN STRUCTURE	1,122 S.F.
STEPS OVER 18" AG	
FRONT STEPS	20 S.F.
STEPS ON PATIO	34 S.F.
FOUNDATION BELOW PATIO	88 S.F.
TOTAL	1,264 S.F.

BUILDING COVERAGE: 1,264/5000 = 25%

PROPOSED OPEN SPACE CALCULATION:

MAIN STRUCTURE	1,122 S.F.
PATIO	741 S.F.
STAIRS/STEPS	178 S.F.
CONCRETE PADS	36 S.F.
DRIVEWAY	265 S.F.
WINDOW WELL	4 S.F.
RETAINING WALLS	236 S.F.
WALKWAY	306 S.F.
TOTAL	2,888 S.F.

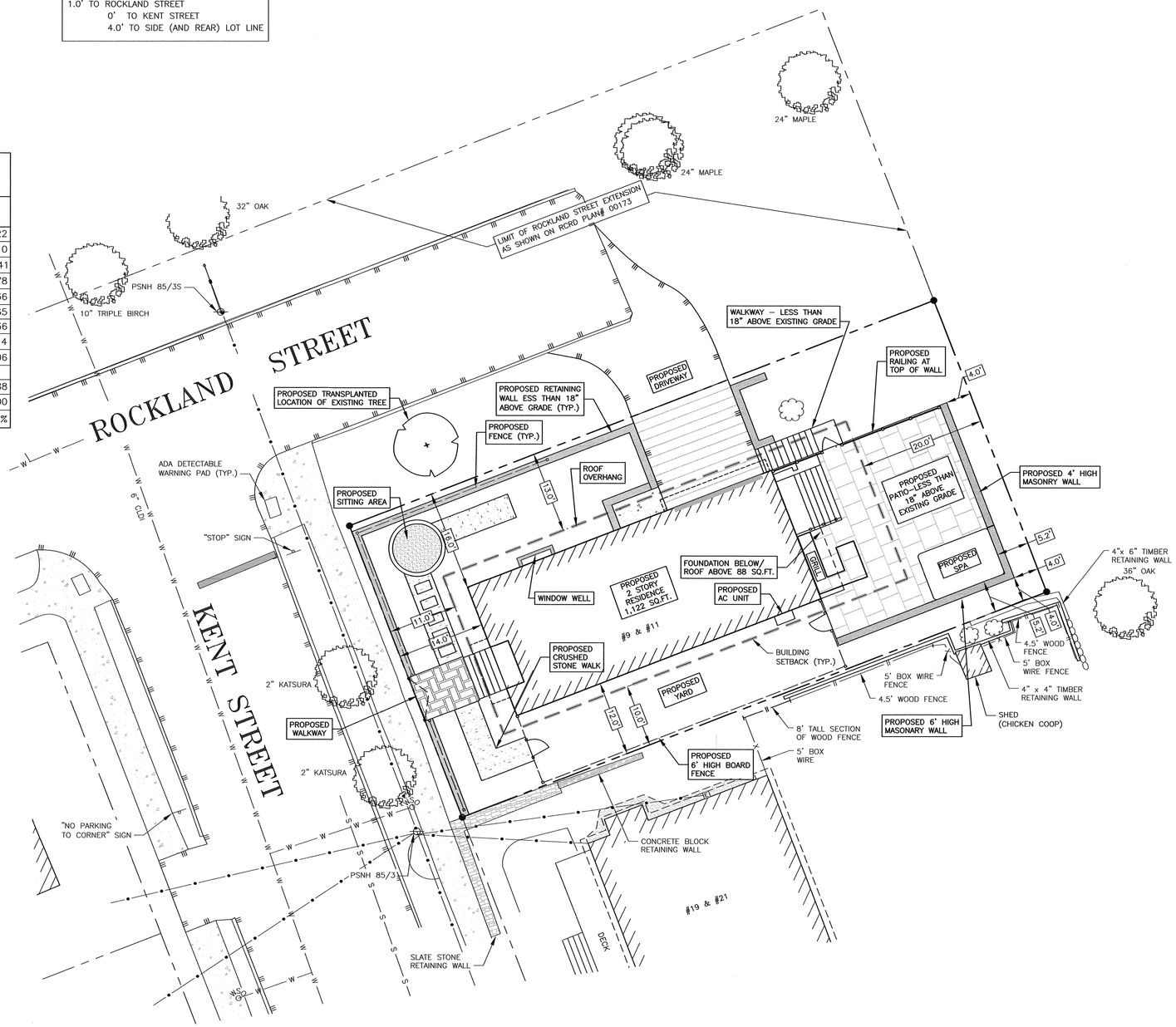
COVERAGE: 2,888/5000 = 58% COVERAGE
100% - 58% = 42% OPEN SPACE

"I CERTIFY THAT THIS PLAN WAS PREPARED UNDER MY DIRECT SUPERVISION, THAT IT IS THE RESULT OF A FIELD SURVEY BY THIS OFFICE AND HAS AN ACCURACY OF THE CLOSED TRAVERSE THAT EXCEEDS THE PRECISION OF 1:15,000."

9.8.23

JOHN R. CHAGNON, LLS #738 DATE

STATE OF NEW HAMPSHIRE LICENSED LAND SURVEYOR NO. 738 JOHN R. CHAGNON



GRAPHIC SCALE
10 5 0 10 20 30 40 FEET
3 0 5 10 METERS

NORTH NAD83 (2011)
N
GRID NH SPC

AMBIT ENGINEERING, INC.
A DIVISION OF HALEY WARD, INC.
200 Griffin Road, Unit 3
Portsmouth, NH 03801
603.430.9282
WWW.HALEYWARD.COM

NOTES:

1) PARCEL IS SHOWN ON THE CITY OF PORTSMOUTH ASSESSOR'S MAP 113 AS LOT 42.

2) OWNERS OF RECORD:
CYNTHIA AUSTIN SMITH &
PETER SMITH
9 KENT STREET
PORTSMOUTH, NH 03801
6358/448
PLAN# 00176

3) PARCEL IS NOT IN A SPECIAL FLOOD HAZARD AREA AS SHOWN ON FIRM PANEL 33015C0259F, DATED 1/29/2021.

4) EXISTING LOT AREA:
5,000 S.F.
0.1148 ACRES

5) PARCEL IS LOCATED IN THE GENERAL RESIDENCE A (GRA) DISTRICT.

6) DIMENSIONAL REQUIREMENTS:

MIN. LOT AREA:	7,500 S.F.
FRONTAGE:	100 FEET
SETBACKS:	
FRONT:	15 FEET
SIDE:	10 FEET
REAR:	20 FEET
MAXIMUM STRUCTURE HEIGHT:	35 FEET
MAXIMUM BUILDING COVERAGE:	25%
MINIMUM OPEN SPACE:	30%

7) THE PURPOSE OF THIS PLAN IS TO SHOW THE PROPOSED STRUCTURE AND SITE IMPROVEMENTS ON ASSESSOR'S MAP 113, LOT 42 IN THE CITY OF PORTSMOUTH.

8) VERTICAL DATUM IS NAVD88. BASIS OF VERTICAL DATUM IS REDUNDANT RTN GNSS OBSERVATIONS.

SMITH RESIDENCE
9 KENT STREET
PORTSMOUTH, N.H.

NO.	DESCRIPTION	DATE
1	ADDED GRILL AREA	9/8/23
0	ISSUED FOR COMMENT	7/19/23

REVISIONS

SCALE: 1" = 10' JULY 2023

VARIANCE PLAN C2

FB 301 PG 45 3492

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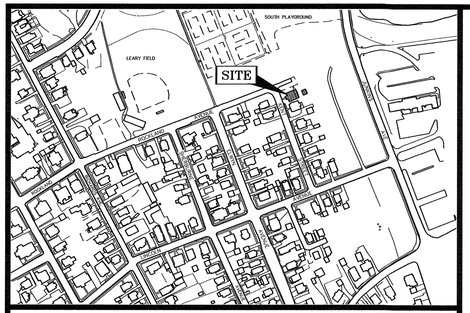
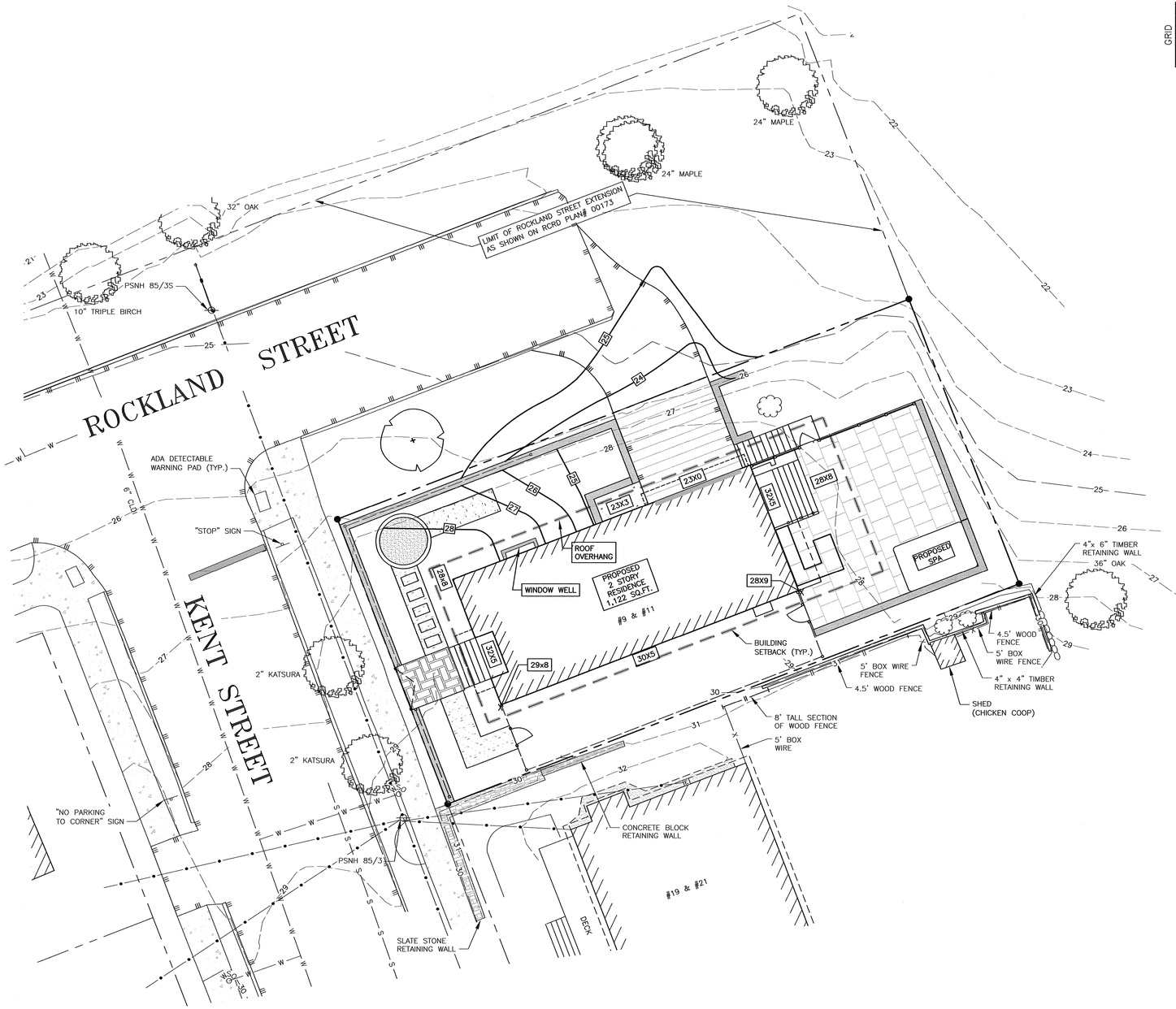


LOCATION MAP SCALE: 1" = 300'



NORTH NAD83 (2011)
N
GRID NH SPC

GRAPHIC SCALE
10 5 0 10 20 30 40 FEET
3 0 5 10 METERS

"I CERTIFY THAT THIS PLAN WAS PREPARED UNDER MY DIRECT SUPERVISION, THAT IT IS THE RESULT OF A FIELD SURVEY BY THIS OFFICE AND HAS AN ACCURACY OF THE CLOSED TRAVERSE THAT EXCEEDS THE PRECISION OF 1:15,000."

9.8.23

JOHN R. CHAGNON, LLS #738 DATE

STATE OF NEW HAMPSHIRE LICENSED LAND SURVEYOR NO. 738 JOHN R. CHAGNON

AMBIT ENGINEERING, INC.
A DIVISION OF HALEY WARD, INC.
WWW.HALEYWARD.COM
200 Griffin Road, Unit 3
Portsmouth, NH 03801
603.430.9282

NOTES:

1) THE CONTRACTOR SHALL NOTIFY DIG SAFE AT 1-888-DIG-SAFE (1-888-344-7233) AT LEAST 72 HOURS PRIOR TO COMMENCING ANY EXCAVATION ON PUBLIC OR PRIVATE PROPERTY WITHIN 100 FEET OF UNDERGROUND UTILITIES. THE EXCAVATOR IS RESPONSIBLE TO MAINTAIN MARKS. DIG SAFE TICKETS EXPIRE IN THIRTY DAYS.

2) UNDERGROUND UTILITY LOCATIONS ARE BASED UPON BEST AVAILABLE EVIDENCE AND ARE NOT FIELD VERIFIED. LOCATING AND PROTECTING ANY ABOVEGROUND OR UNDERGROUND UTILITIES IS THE SOLE RESPONSIBILITY OF THE CONTRACTOR AND/OR THE OWNER. UTILITY CONFLICTS SHOULD BE REPORTED AT ONCE TO THE DESIGN ENGINEER.

3) CONTRACTOR SHALL INSTALL AND MAINTAIN EROSION CONTROL MEASURES IN ACCORDANCE WITH THE "NEW HAMPSHIRE STORMWATER MANUAL, VOLUME 3, EROSION AND SEDIMENT CONTROLS DURING CONSTRUCTION. (NHDES DECEMBER 2008).

SMITH RESIDENCE
9 KENT STREET
PORTSMOUTH, N.H.

NO.	DESCRIPTION	DATE
2	GRADING TO NEW LAYOUT	9/8/23
1	DRAINAGE	3/1/23
0	ISSUED FOR APPROVAL	2/7/23

REVISIONS

STATE OF NEW HAMPSHIRE JOHN R. CHAGNON No. 7651 LICENSED PROFESSIONAL ENGINEER

SCALE: 1" = 10' FEBRUARY 2023

DRAINAGE & GRADING PLAN

C3

FB 301 PG 45

3492

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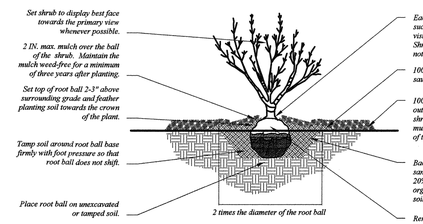
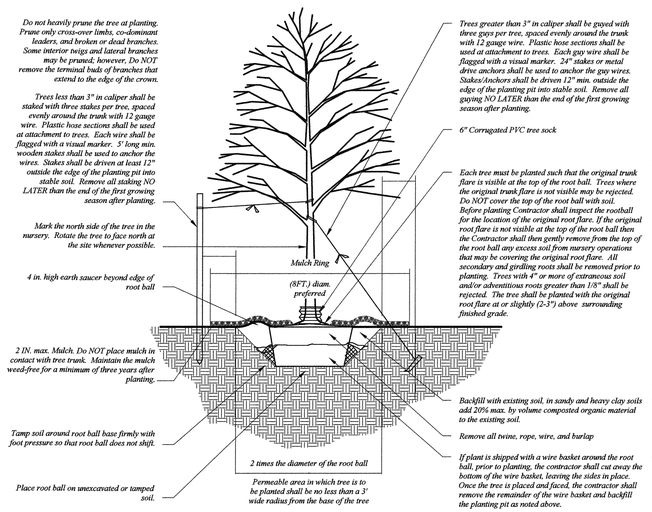
Landscape Notes

1. Design is based on Engineering drawings by Ambit Engineering, Inc received 07-13-2023 and Architectural Drawings by Somma Studios. Drawings may require adjustment due to actual field conditions.
2. This plan is FOR REVIEW purposes ONLY, NOT for Construction. Construction Documents will be provided upon request.
3. The contractor shall follow best management practices during construction and shall take all means necessary to stabilize and protect the site from erosion.
4. Erosion Control shall be in place prior to construction.
5. Erosion Control shall comply with State and Local Erosion & Sedimentation Control Practices
6. The Contractor shall verify layout and grades and inform the Landscape Architect or Client's Representative of any discrepancies or changes in layout and/or grade relationships prior to construction.
7. It is the contractor's responsibility to verify drawings provided are to the correct scale prior to any bid, estimate or installation. A graphic scale bar has been provided on each sheet for this purpose. If it is determined that the scale of the drawing is incorrect, the landscape architect will provide a set of drawings at the correct scale, at the request of the contractor.
8. Trees to Remain within the construction zone shall be protected from damage for the duration of the project by snow fence or other suitable means of protection to be approved by Landscape Architect or Client's Representative. Snow fence shall be located at the drip line or at the distance in feet from the trunk equal to the diameter of the tree caliper in inches, whichever is greater, and shall be expanded to include any and all surface roots. Do not fill or mulch on the trunk flare. Do not disturb roots. In order to protect the integrity of the roots, branches, trunk and bark of the tree(s) no vehicles or construction equipment shall drive or park in or on the area within the drip line(s) of the tree(s). Do not store any refuse or construction materials or portalets within the tree protection area.
9. Location, support, protection, and restoration of all existing utilities and appurtenances shall be the responsibility of the Contractor.
10. The Contractor shall verify exact location and elevation of all utilities with the respective utility owners prior to construction. Call DIGSAFE at 811 or 888-DIG-SAFE (1-888-344-7233.)
11. The Contractor shall procure any required permits prior to construction.
12. Prior to any landscape construction activities Contractor shall test all existing loam and loam from off-site intended to be used for lawns and plant beds using a thorough sampling throughout the supply. Soil testing shall indicate levels of pH, nitrates, macro and micro nutrients, texture, soluble salts, and organic matter. Contractor shall amend all soils to be used for lawns and plant beds per testing results' recommendations and review with Landscape Architect. All loam to be used on site shall be amended as approved by the Landscape Architect prior to placement.
13. Contractor shall notify landscape architect or owner's representative immediately if at any point during demolition or construction a site condition is discovered which may negatively impact the completed project. This includes, but is not limited to, unforeseen drainage problems, unknown subsurface conditions, and discrepancies between the plan and the site. If a Contractor is aware of a potential issue and does not bring it to the attention of the Landscape Architect or Owner's Representative immediately, they may be responsible for the labor and materials associated with correcting the problem.
14. The Contractor shall furnish and plant all plants shown on the drawings and listed thereon. All plants shall be nursery-grown under climatic conditions similar to those in the locality of the project. Plants shall conform to the botanical names and standards of size, culture, and quality for the highest grades and standards as adopted by the American Association of Nurserymen, Inc. in the American Standard of Nursery Stock, American Standards Institute, Inc. 230 Southern Building, Washington, D.C. 20005.
15. A complete list of plants, including a schedule of sizes, quantities, and other requirements is shown on the drawings. In the event that quantity discrepancies or material omissions occur in the plant materials list, the planting plans shall govern.
16. All plants shall be legibly tagged with proper botanical name.
17. Owner or Owner's Representative will inspect plants upon delivery for conformity to Specification requirements. Such approval shall not affect the right of inspection and rejection during or after the progress of the work. The Owner reserves the right to inspect and/or select all trees at the place of growth and reserves the right to approve a representative sample of each type of shrub, herbaceous perennial, annual, and ground cover at the place of growth. Such sample will serve as a minimum standard for all plants of the same species used in this work.
18. No substitutions of plants may be made without prior approval of the Owner or the Owner's Representative for any reason.
19. All landscaping shall be provided with the following:
    a. Outside hose attachments spaced a maximum of 150 feet apart, and
    b. An underground irrigation system, or
    c. A temporary irrigation system designed for a two-year period of plant establishment.
21. If an automatic irrigation system is installed, all irrigation valve boxes shall be located within planting bed areas.
22. The contractor is responsible for all plant material from the time their work commences until final acceptance. This includes but is not limited to maintaining all plants in good condition, the security of the plant material once delivered to the site, watering of plants, including seeding and weeding. Plants shall be appropriately watered prior to, during, and after planting. It is the Contractor's responsibility to provide clean water suitable for plant health from off site, should it not be available on site.
23. All disturbed areas will be dressed with 6" of loam and planted as noted on the plans or seeded except plant beds. Plant beds shall be prepared to a depth of 12" with 75% loam and 25% compost.
24. Trees, ground cover, and shrub beds shall be mulched to a depth of 2" with one-year-old, well-composted, shredded native bark not longer than 4" in length and ½" in width, free of woodchips and sawdust. Mulch for ferns and herbaceous perennials shall be no longer than 1" in length. Trees in lawn areas shall be mulched in a 5' diameter min. saucer. Color of mulch shall be black.
25. Drip strip shall extend to 6" min. beyond roof overhang and shall be edged with 3/16" thick metal edger.
26. In no case shall mulch touch the stem of a plant nor shall mulch ever be more than 3" thick total (including previously applied mulch) over the root ball of any plant.
27. Secondary lateral branches of deciduous trees overhanging vehicular and pedestrian travel ways shall be pruned up to a height of 8' to allow clear and safe passage of vehicles and pedestrians under tree canopy. Shrubs and ornamental plantings adjacent to vehicular travel way shall not exceed three feet in height where sightlines would be blocked. If pruning is necessary to maintain the required maximum height, plants shall be pruned to a natural form and shall not be sheared.
28. Snow shall be stored a minimum of 5' from shrubs and trunks of trees.
29. The Landscape Contractor shall guarantee all lawns and plant materials for a period of not fewer than one year. Dead, dying, or diseased planting shall be removed and replaced within the growing season.
30. Landscape Architect is not responsible for the means and methods of the Contractor.

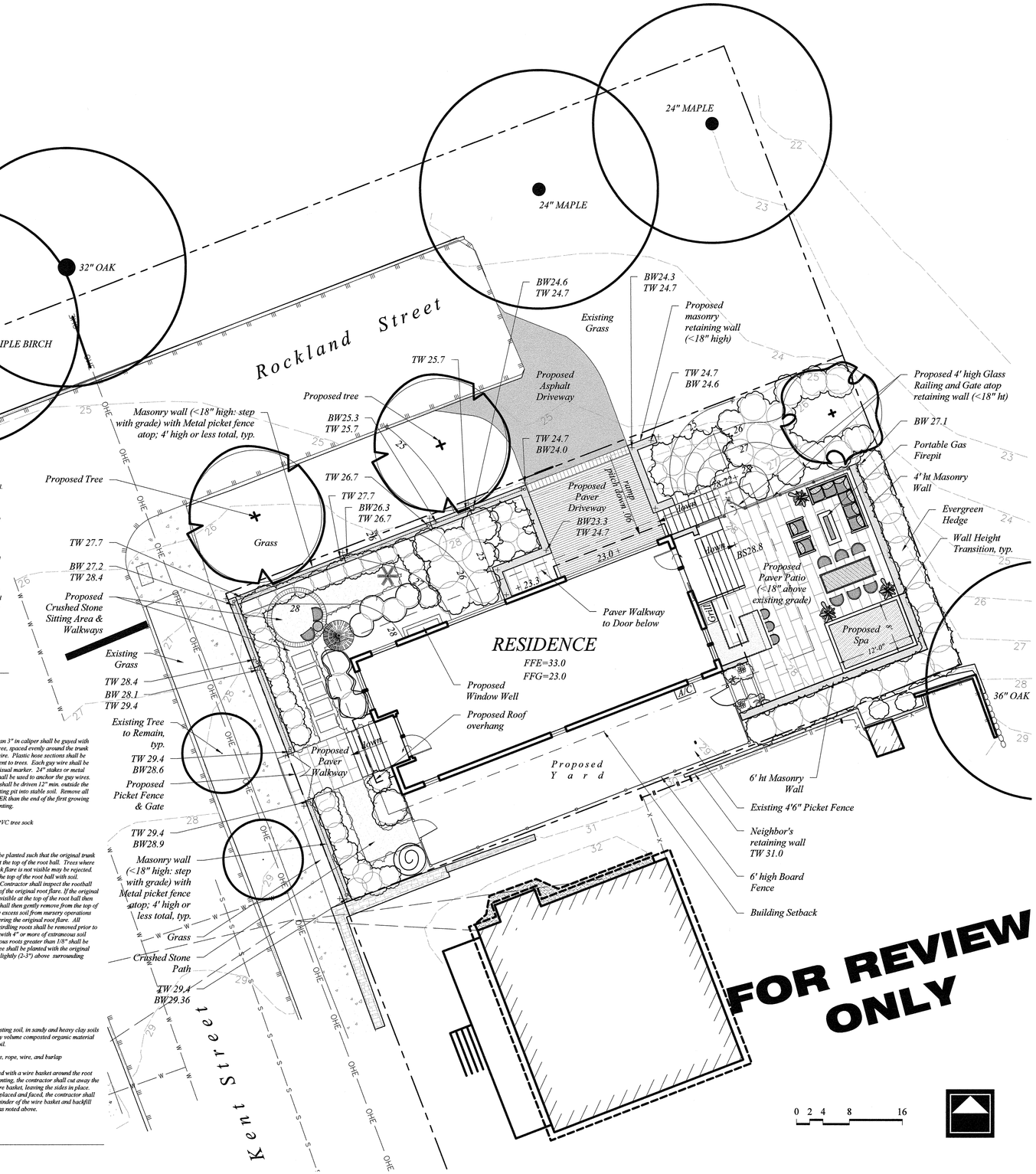
Plant List TBD



Shrub Planting Detail
Scale: NTS



Tree Planting Detail
Scale: NTS



woodburn & company
LANDSCAPE ARCHITECTURE
103 Kent Place Newmarket, New Hampshire Phone: 603.659.5949

Smith Residence
LANDSCAPE PLAN
9 Kent Street, Portsmouth, New Hampshire

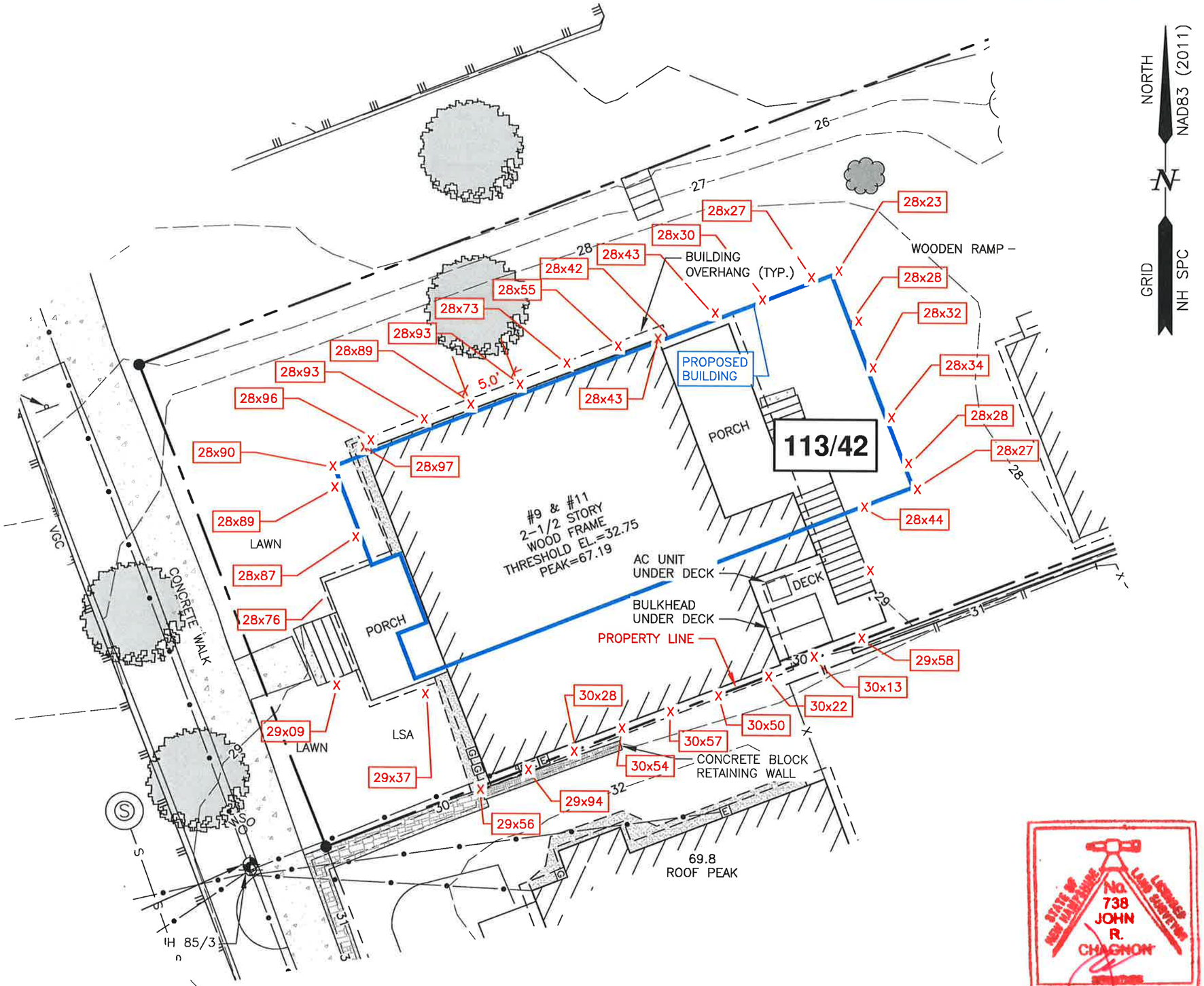
Drawn By:	WSA
Checked By:	RW
Scale:	1"=10'-0"
Date:	2023-08-06
Revisions:	

FOR REVIEW ONLY

L-IL

Sheet 1 of __

© 2023 Woodburn & Company Landscape Architecture, LLC



AMBIT ENGINEERING, INC.
Civil Engineers & Land Surveyors
200 Griffin Road - Unit 3
Portsmouth, N.H. 03801-7114
Tel (603) 430-9282
Fax (603) 436-2315

NOTES:

1) THE CONTRACTOR SHALL NOTIFY DIG SAFE AT 1-888-DIG-SAFE (1-888-344-7233) AT LEAST 72 HOURS PRIOR TO COMMENCING ANY EXCAVATION ON PUBLIC OR PRIVATE PROPERTY WITHIN 100 FEET OF UNDERGROUND UTILITIES. THE EXCAVATOR IS RESPONSIBLE TO MAINTAIN MARKS. DIG SAFE TICKETS EXPIRE IN THIRTY DAYS.

2) UNDERGROUND UTILITY LOCATIONS ARE BASED UPON BEST AVAILABLE EVIDENCE AND ARE NOT FIELD VERIFIED. LOCATING AND PROTECTING ANY ABOVEGROUND OR UNDERGROUND UTILITIES IS THE SOLE RESPONSIBILITY OF THE CONTRACTOR AND/OR THE OWNER. UTILITY CONFLICTS SHOULD BE REPORTED AT ONCE TO THE DESIGN ENGINEER.

3) CONTRACTOR SHALL INSTALL AND MAINTAIN EROSION CONTROL MEASURES IN ACCORDANCE WITH THE "NEW HAMPSHIRE STORMWATER MANUAL, VOLUME 3, EROSION AND SEDIMENT CONTROLS DURING CONSTRUCTION. (NHDES DECEMBER 2008).

EXHIBIT I

SMITH RESIDENCE
9 KENT STREET
PORTSMOUTH, N.H.

NO.	DESCRIPTION	DATE
0	ISSUED FOR COMMENT	9/6/23

REVISIONS

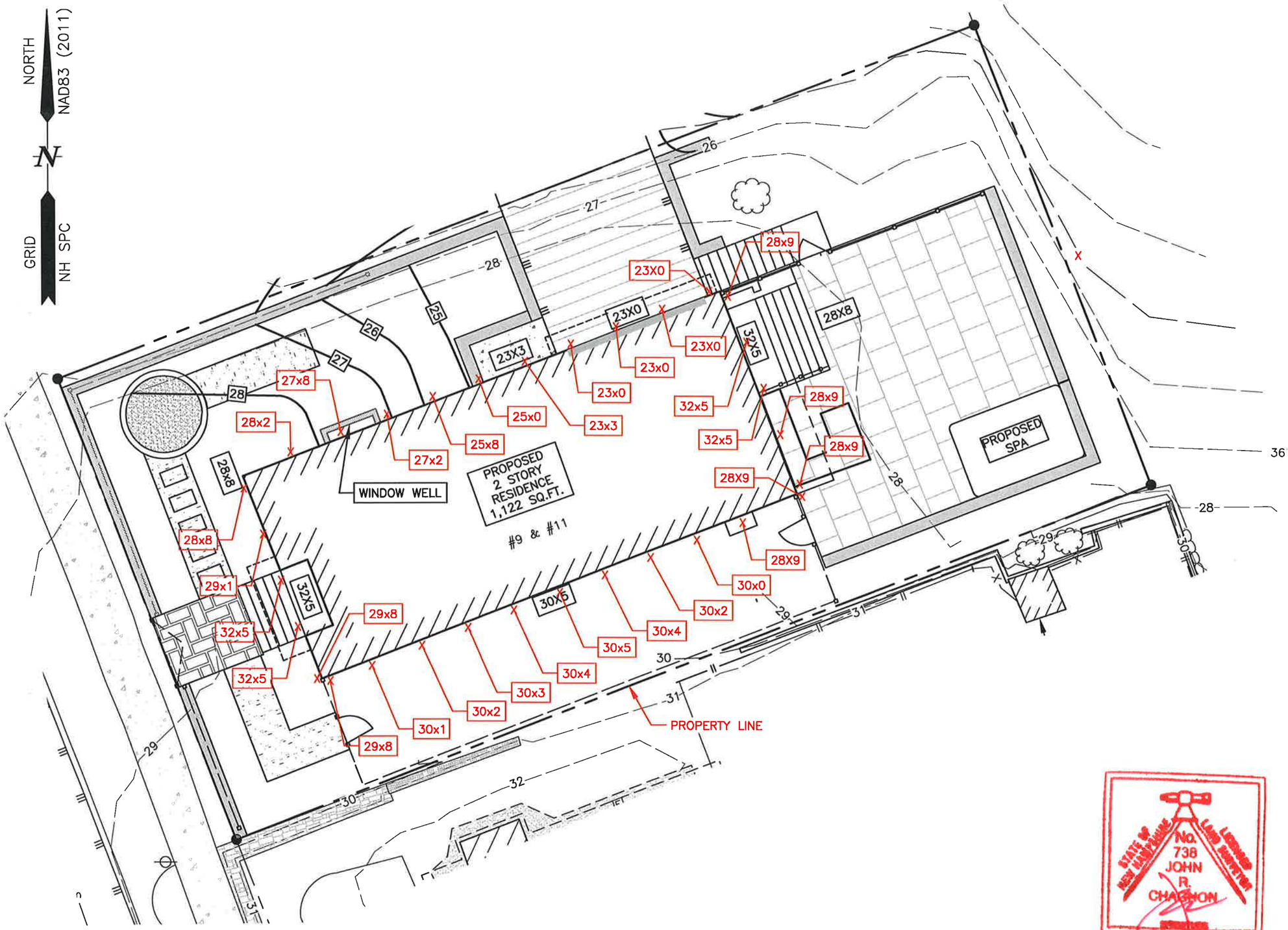
STATE OF NEW HAMPSHIRE — No. 738 JOHN R. CHAGNON — LICENSED LAND SURVEYOR

SCALE: 1" = 10' — SEPTEMBER 2023

EXISTING GROUND AVERAGE GRADING PLAN — G1

FB 301 PG 45 — 3492

P:\NH\5010188-Peter_Smith\3492-Kent St., Portsmouth-JRC\3492\2022 Survey\Plans & Specs\Site\3492 Survey 2022.dwg, 9/11/2023 11:41:23 AM, \\SVRPSM-FS01\Portsmouth Copier Sharp MX3071



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SMITH RESIDENCE
9 KENT STREET
PORTSMOUTH, N.H.

NO.	DESCRIPTION	DATE
0	ISSUED FOR COMMENT	9/6/23

REVISIONS

STATE OF NEW HAMPSHIRE — No. 738 JOHN R. CHAGNON — LICENSED LAND SURVEYOR

SCALE: 1" = 10' — SEPTEMBER 2023

PROPOSED GROUND AVERAGE GRADING PLAN — G2

FB 301 PG 45 — 3492

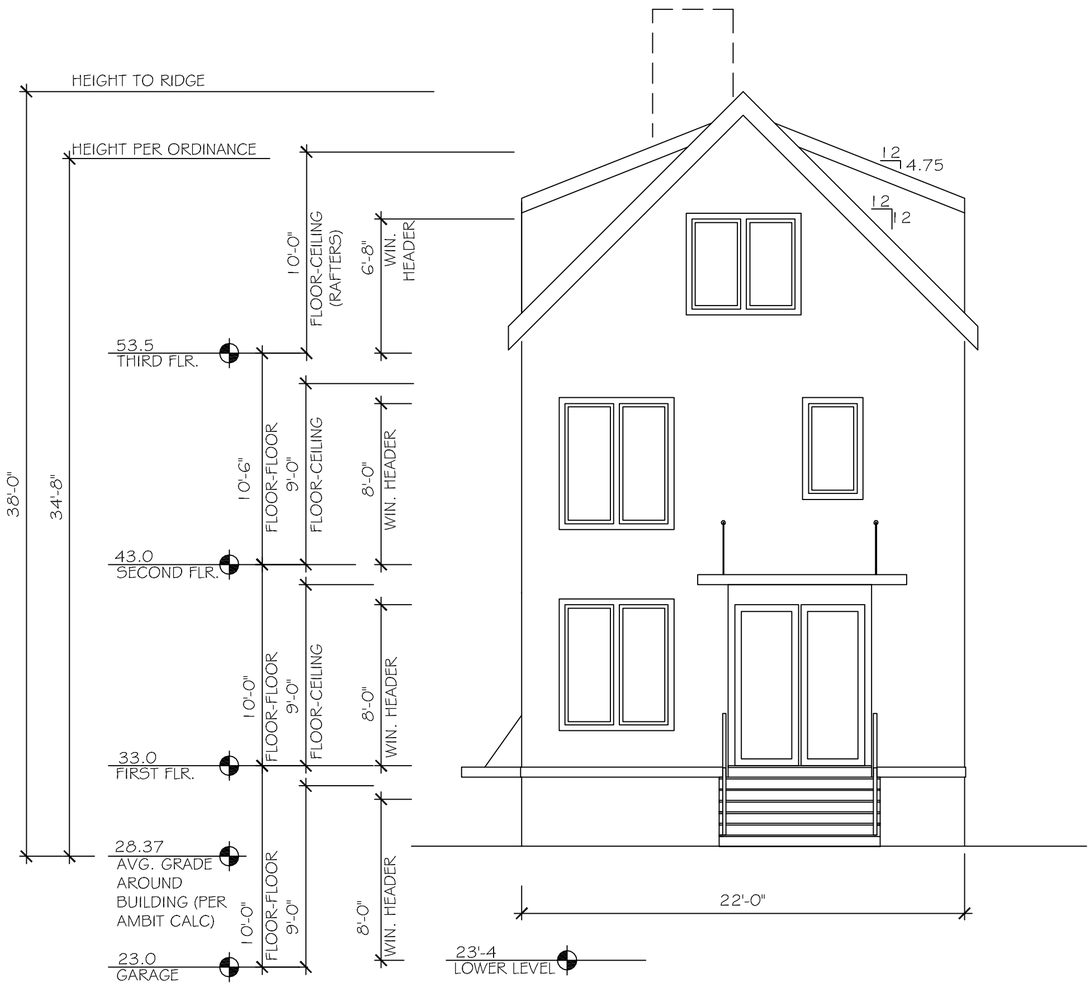
P:\NH\5010188-Peter_Smith\3492-Kent St., Portsmouth-JRC\3492\2022 Survey\Plans & Specs\Site\3492 Site 2023.dwg, 9/11/2023 12:57:19 PM, SHARP MX-3071 (0300380X00)

Average Grade Work Sheet -Existing Grades						
Project	Smith Residence				Calculated	
Address:	9 Kent Street, Portsmouth, NH				9/8/2023	
At Proposed Building; Existing Grades 5' OC *						
SECTION	Elev	Elev	Elev	Elev	Total	
SOUTH	28.27	28.44	29.58	30.13	116.42	
	30.22	30.50	30.57	30.54	121.83	
	30.28	29.94	29.56	29.37	119.15	
					0.00	
					0.00	AVG PER SECTION
				12.0	357.40	29.78
WEST	29.09	28.76	28.87	28.89	115.61	
	28.90				28.90	
					0.00	
						AVG PER SECTION
				5.0	144.51	28.90
NORTH	28.96	28.93	28.89	28.93	115.71	
	28.73	28.55	28.42	28.43	114.13	
	28.30	28.27			56.57	
					0.00	
					0.00	AVG PER SECTION
				10.0	286.41	28.64
EAST	28.23	28.28	28.32	28.34	113.17	
	28.28	28.27			56.55	
					0.00	
					0.00	
						AVG PER SECTION
				6	169.72	28.29
Total	958.04	>	AVERAGE GRADE			
#	33		29.03			

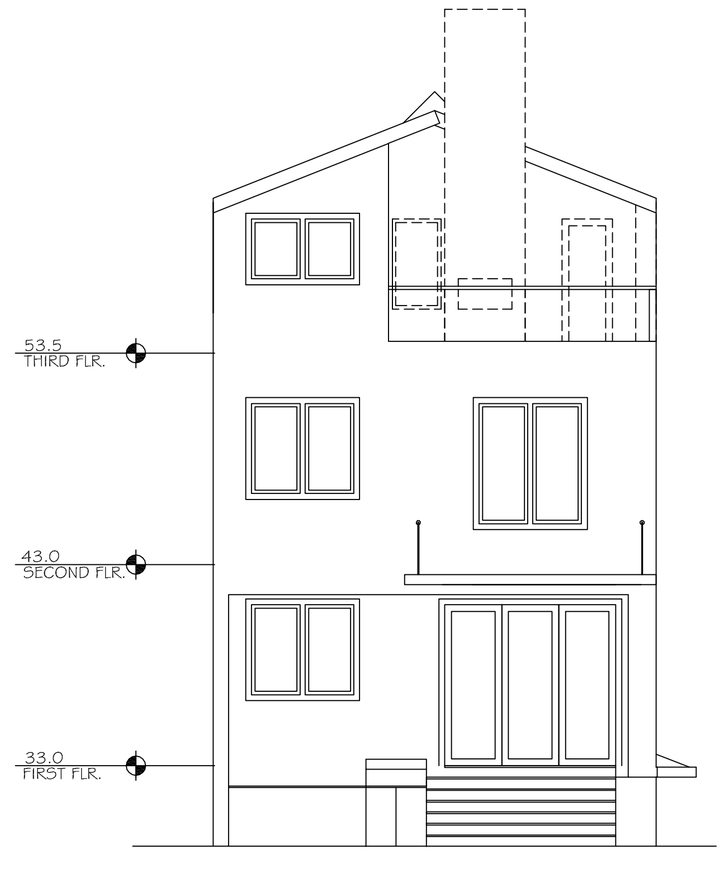
* NOTE: Where the proposed building is placed in an area where there is no existing grade (i.e. within the existing building) the closest existing grade is shown.

Average Grade Work Sheet - Proposed Grades						
Project	Smith Residence				Calculated	
Address:	9 Kent Street, Portsmouth, NH				9/8/2023	
At Proposed Building; Proposed Grades 5' OC						
SECTION	Elev	Elev	Elev	Elev	Total	
SOUTH	29.8	30.1	30.2	30.3	120.40	
	30.4	30.5	30.4	30.2	121.50	
	30.0	29.8	28.9		88.70	
					0.00	
					0.00	AVG PER SECTION
				11.0	330.60	30.05
WEST	29.8	32.5	32.5	29.1	123.90	
	28.8				28.80	
					0.00	
						AVG PER SECTION
				5.0	152.70	30.54
NORTH	28.8	28.2	27.8	27.2	112.00	
	25.8	25.0	23.3	23.0	97.10	
	23.0	23.0	23.0	23.0	92.00	
					0.00	
					0.00	AVG PER SECTION
				12.0	301.10	25.09
EAST	28.9	32.5	32.5	28.9	122.80	
	28.9				28.90	
					0.00	
					0.00	
						AVG PER SECTION
				5	151.70	30.34
Total	936.10	>	AVERAGE GRADE			
#	33		28.37			

EXHIBIT J

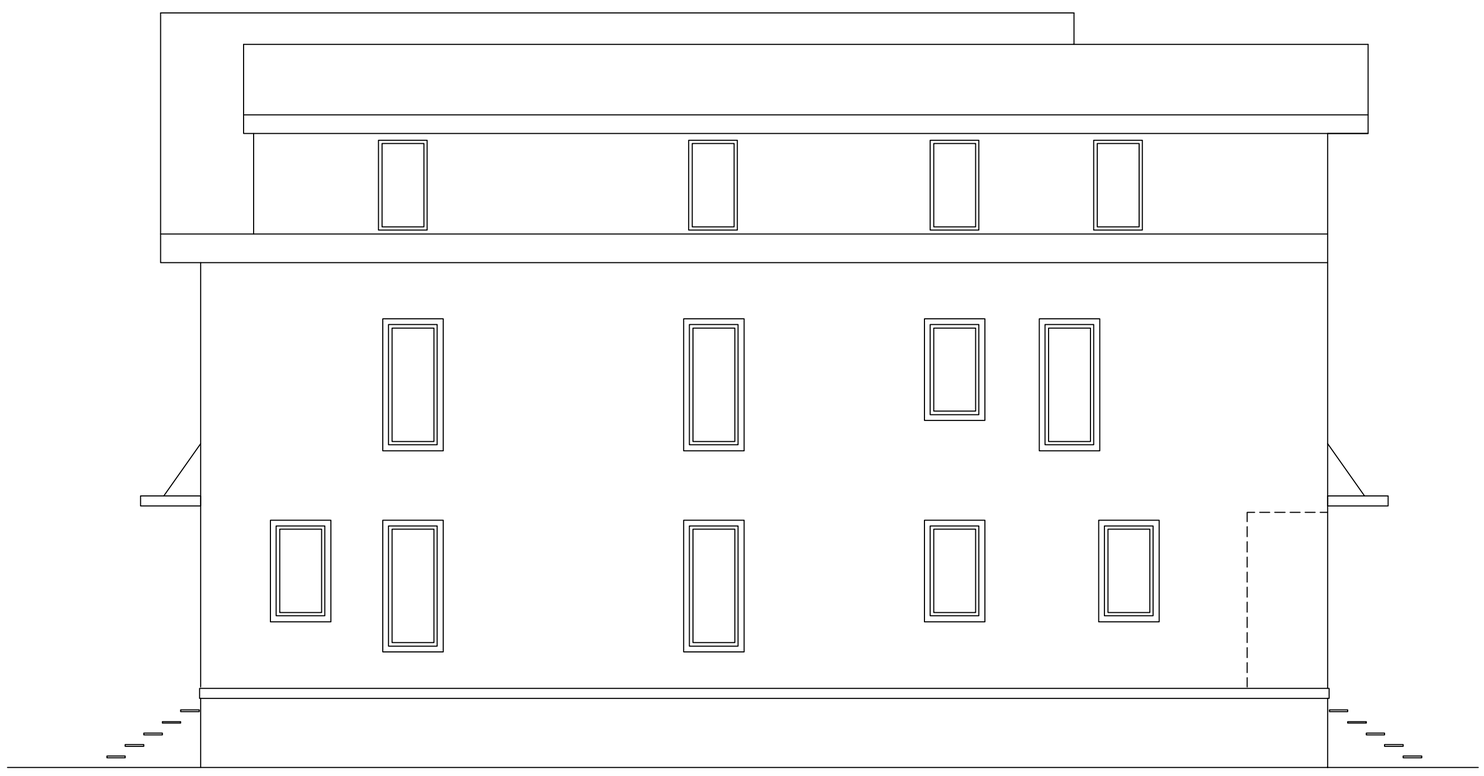


KENT STREET ELEVATION



BACK ELEVATION

ROCKLAND STREET ELEVATION

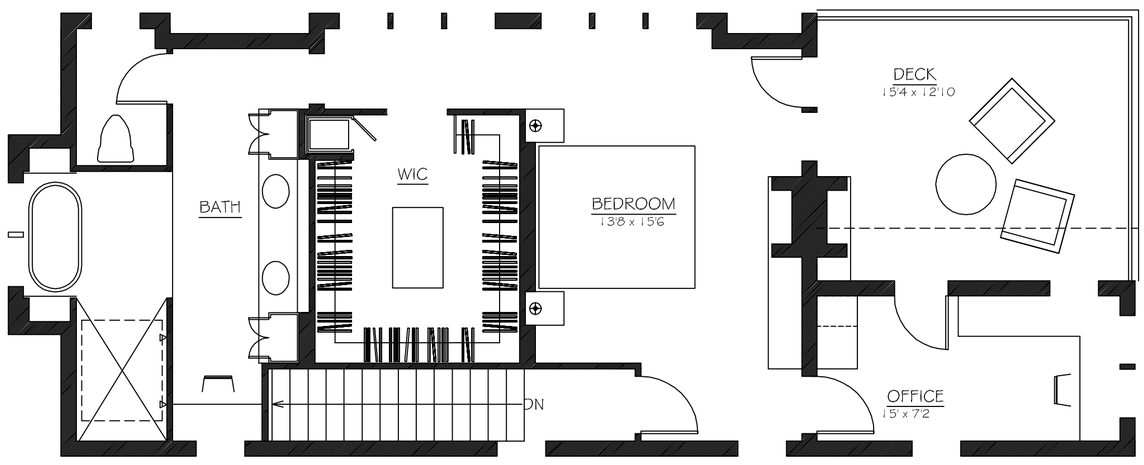


NEIGHBOR'S ELEVATION

SMITH RESIDENCE (B)
9 KENT STREET, PORTSMOUTH, NH

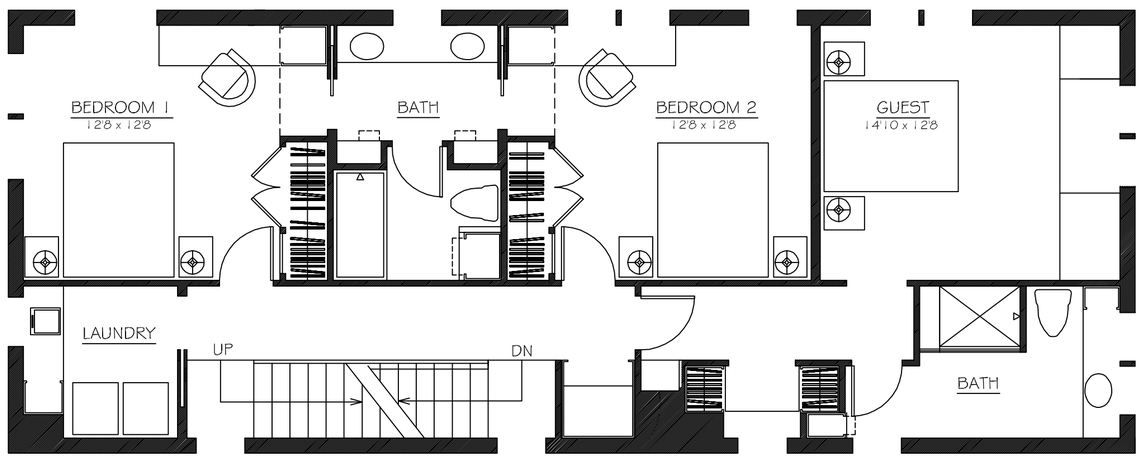
PROPOSED ELEVATIONS
$\frac{3}{16}" = 1'-0"$

SEPT 8, 2023
SOMMA STUDIOS



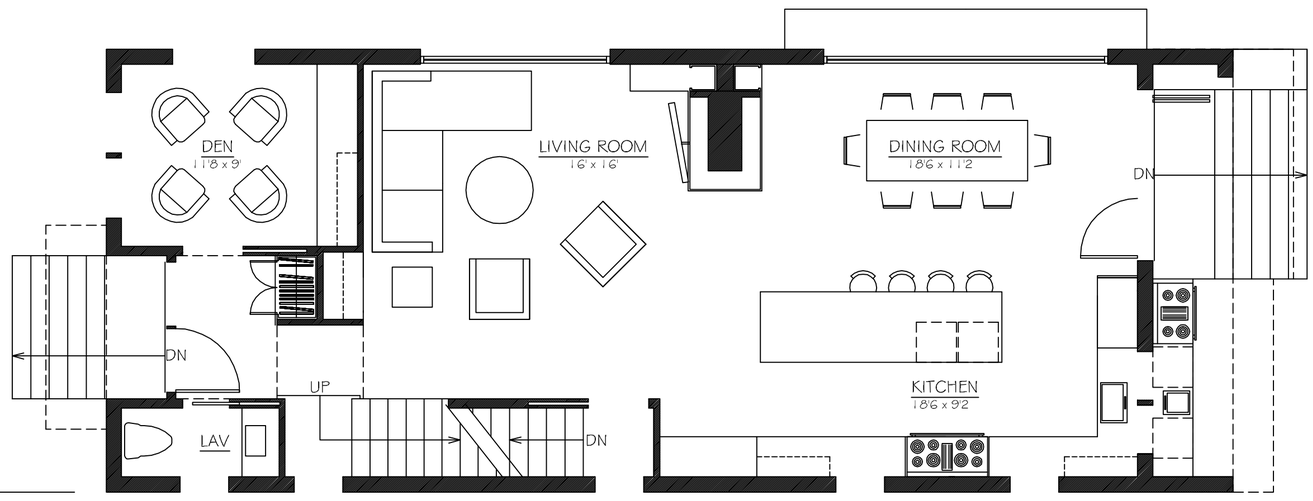
THIRD FLOOR

857 SF LIVING SPACE



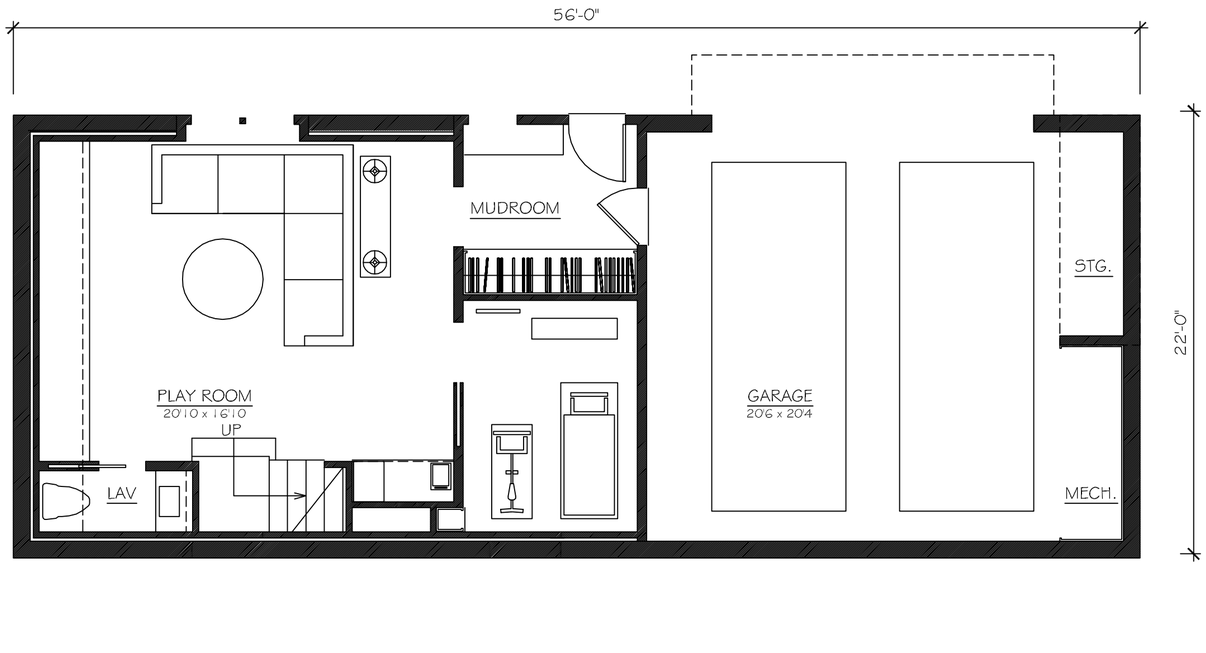
SECOND FLOOR

1115 SF LIVING SPACE



FIRST FLOOR

1013 SF LIVING SPACE



LOWER LEVEL

577 SF LIVING SPACE

SMITH RESIDENCE (B)

PROPOSED FLOOR PLANS

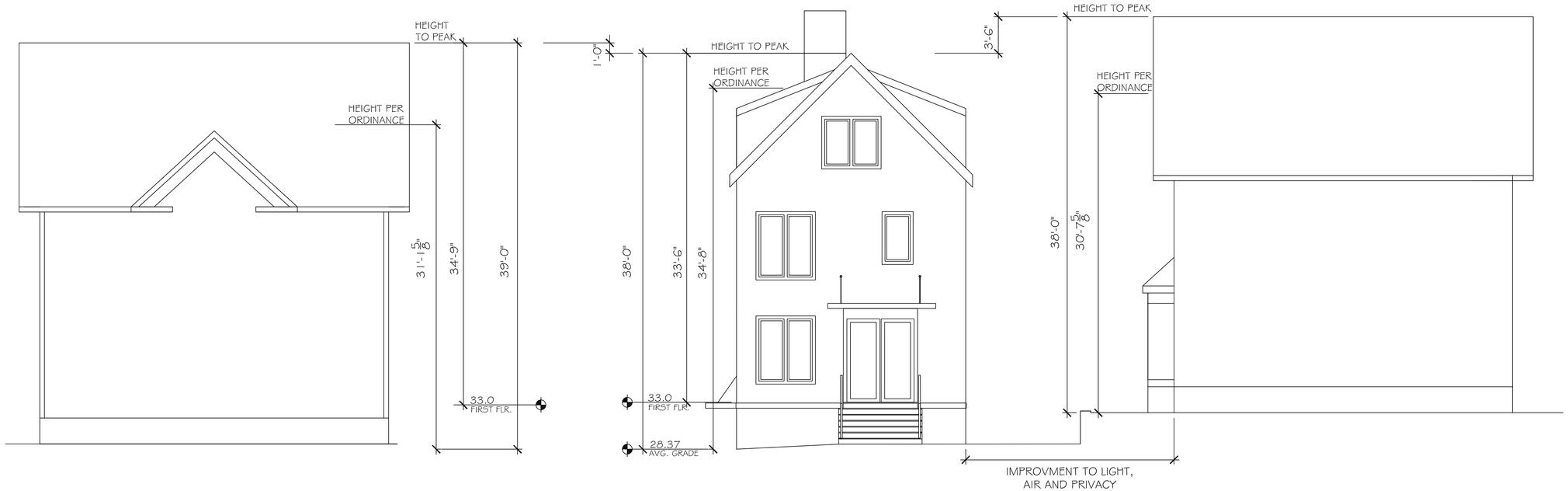
SEPT 8, 2023

9 KENT STREET, PORTSMOUTH, NH

$\frac{3}{16}" = 1'-0"$

SOMMA STUDIOS

EXHIBIT K



EXISTING 9-11 KENT

PROPOSED 9 KENT STREET

1'-0" SHORTER THAN EXISTING HOME AT 9 KENT
3'-6" SHORTER THAN 19-21 KENT

EXISTING 19-21 KENT

SMITH RESIDENCE (B)

9 KENT STREET, PORTSMOUTH, NH

HEIGHT COMPARISON DIAGRAM

$\frac{3}{16}$" = 1'-0"

SEPT 8, 2023

SOMMA STUDIOS

EXHIBIT M

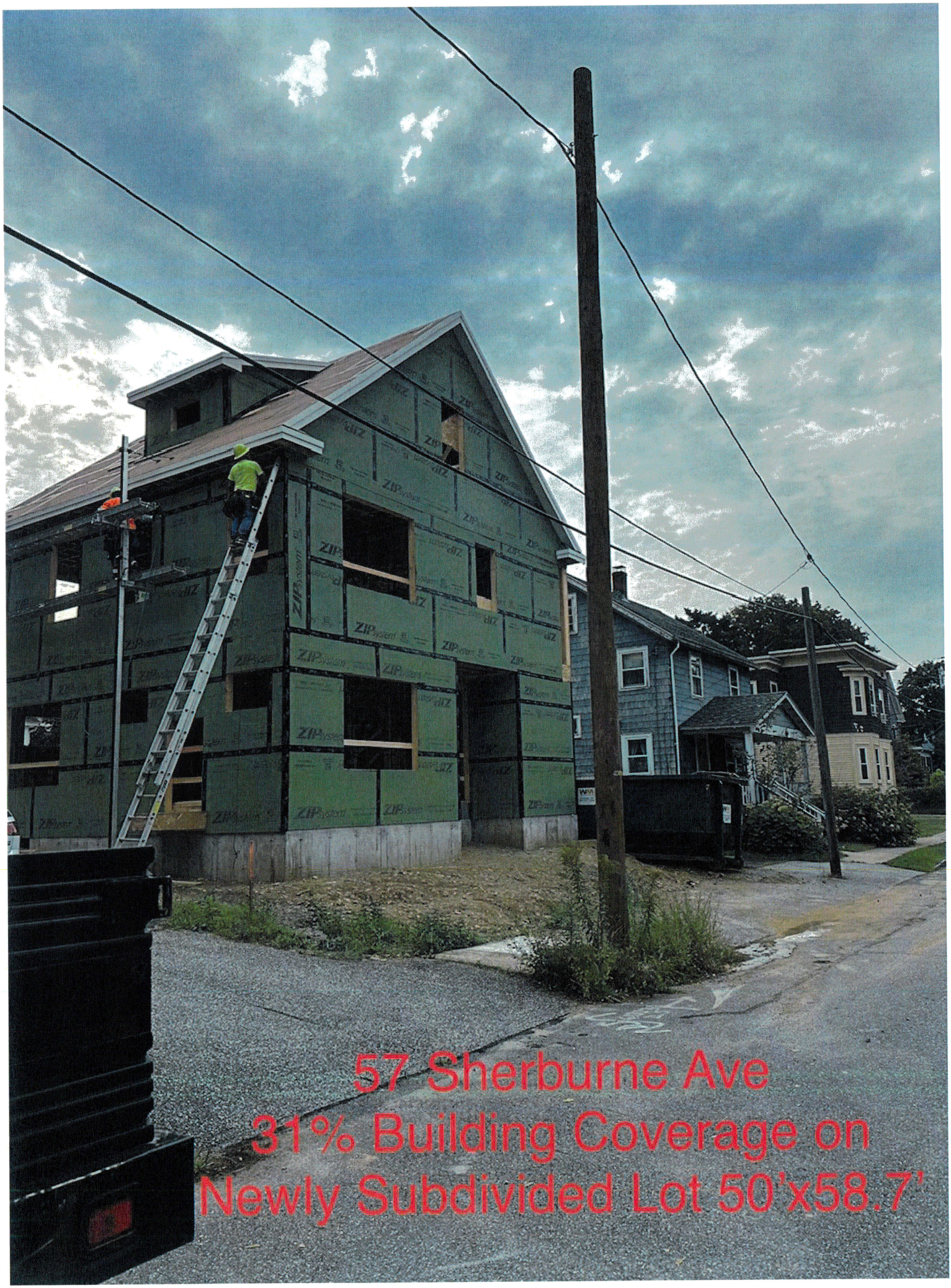
8.5’ Light & Air Between
9 Kent St & 19 Kent St

EXHIBIT N

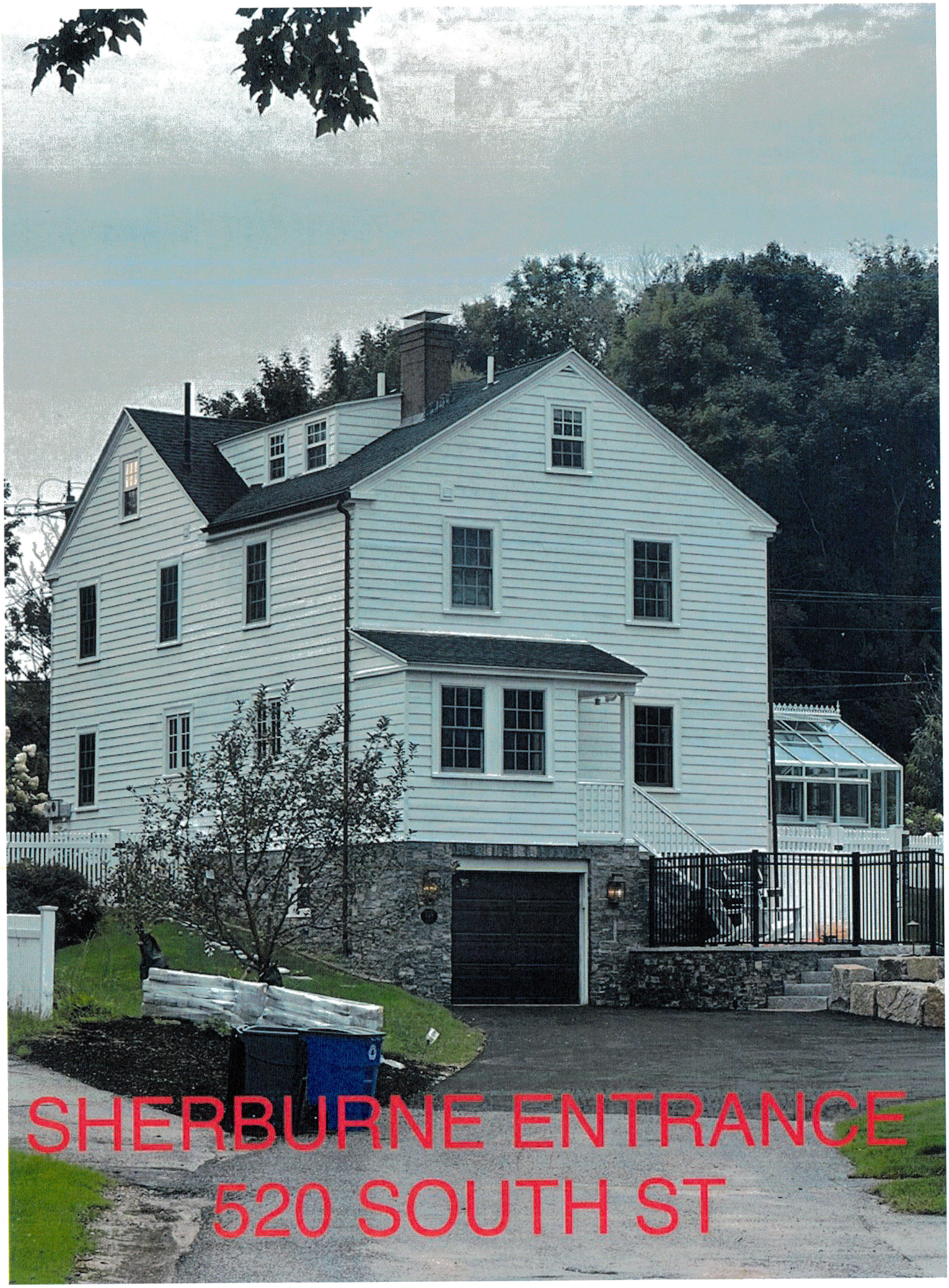
84 ROCKLAND ST

84 ROCKLAND ST

31 SHERBURNE AVE


57 Sherburne Ave
31% Building Coverage on
Newly Subdivided Lot 50'x58.7'

Junkins Ave
Lincoln Ave
Haven Rd
South St
Clough Dr
Kent St
Elwyn Ave
Elwyn Ave
Elwyn Ave
Sherburne Ave
Richards Ave
Richards Ave


SHERBURNE ENTRANCE
520 SOUTH ST

37 SHERBURNE AVE

15 HAVEN RD

161 ELWYN AVE

181 ELWYN AVE

171 ELWYN AVE

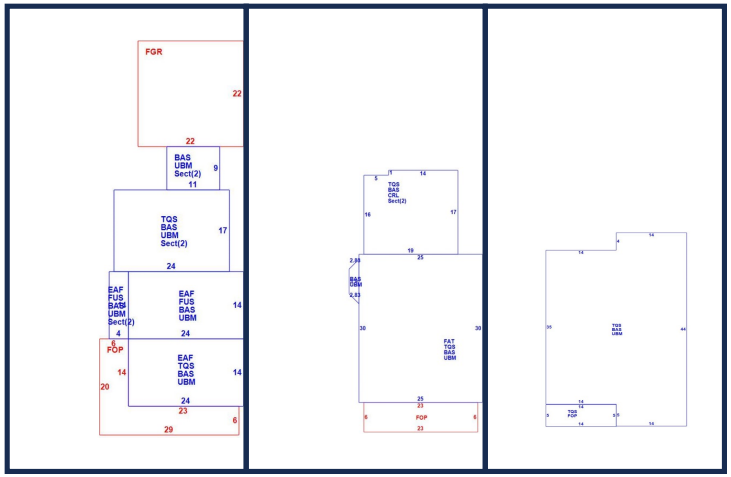
EXHIBIT O

Impact of non-conforming home on neighboring home values.

Did 11 Elwyn Ave diminish neighboring property values?

11 Elwyn Ave (non-conforming house)

- 39.5% building coverage on 5,000 sq ft lot
- 80’ long building on 50’ x 100’ lot
- 50’ of zero-lot-line coverage
- ZBA Approved September, 2018



11 Elwyn Ave **21 Elwyn Ave** **27 Elwyn Ave**

No! Abutting neighbors set sales records for Elwyn neighborhood!

21 Elwyn Ave
Sold $1.38M
$641.39/sq ft
Closed 4/12/21

➡

27 Elwyn Ave
Sold $1.40M
$633.81/sq ft
Closed 3/10/21

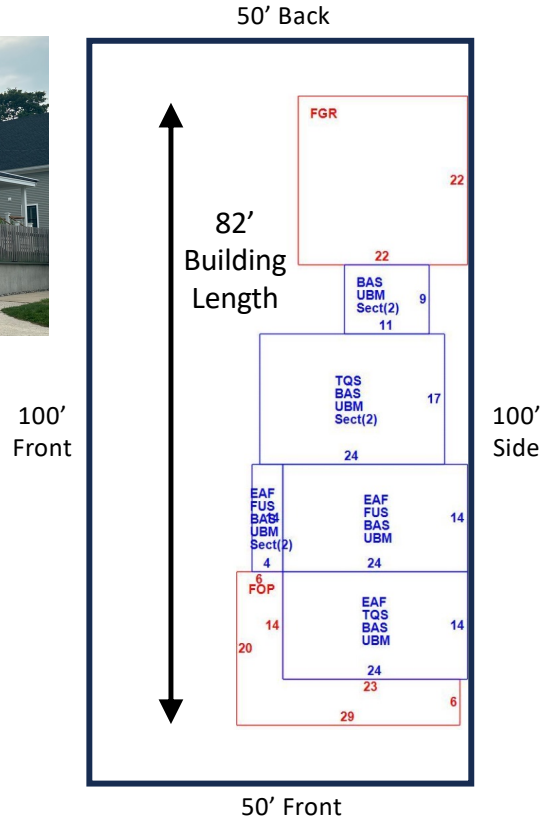
➡

Same Builder.
Similar Houses.
Similar Finishes.
Same Sale Price.

➡

No Adverse Impact
On Neighboring
Property Values.

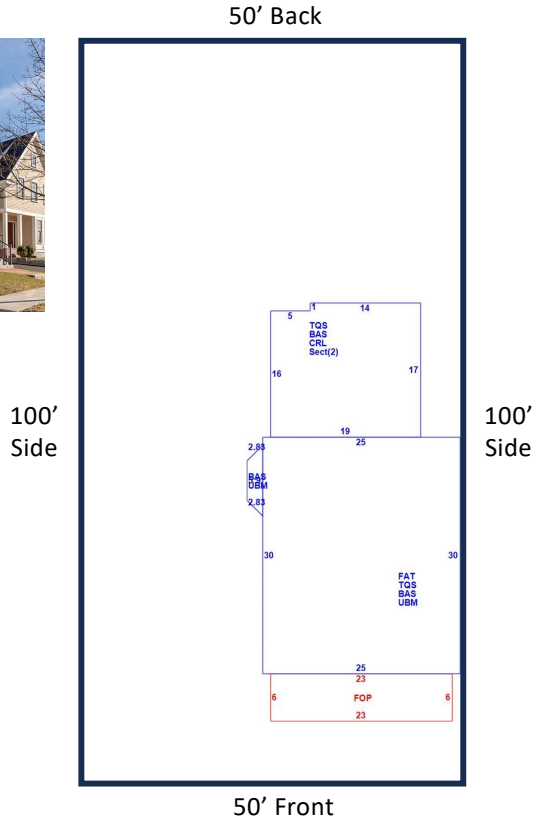
11 Elwyn Ave



https://gis.vgsi.com/PortsmouthNH/Parcel.aspx?Pid=33363

50’ x 100’ Lot (5,000 Sq Ft)
82’ Long House
50’ Zero Lot Line Coverage

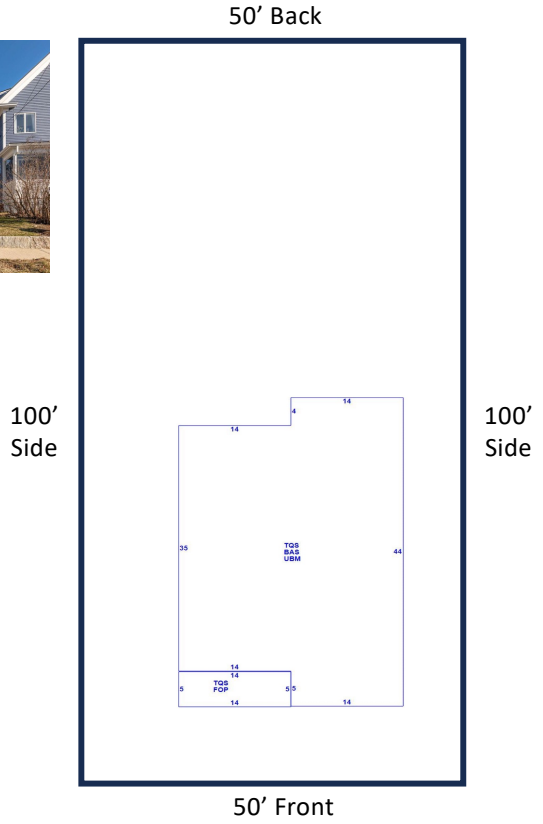
21 Elwyn Ave



50’ x 100’ Lot (5,000 Sq Ft)

https://gis.vgsi.com/PortsmouthNH/Parcel.aspx?Pid=33364

27 Elwyn Ave



50’ x 100’ Lot (5,000 Sq Ft)

https://gis.vgsi.com/PortsmouthNH/Parcel.aspx?Pid=52970

EXHIBIT L

STOP
TANGRAM 3DS

TANGRAM 3DS

Kent ST
STOP

TANGRAM 3DS

STATEMENT

September 13th, 2023

Jared Foley
Creative Director

Tangram 3DS
21 Rogers Road, Suite One
Kittery, Maine 03904

To whom it may concern,

Regarding the Roof Height of the Proposed 9 Kent Development as Seen in the Renderings:
The roof peak of the proposed 9 Kent development is several feet lower than the existing roof peak of 19/21 Kent. In some of the renderings, particularly the Kent St. Elevation rendering, the proposed 9 Kent roof peak appears to be higher than the existing 19/21 Kent roof peak. This is simply an illusion caused by perspective.

The front facade of the proposed 9 Kent and the existing 19/21 Kent are set back nearly the same distance to the Kent St. curb. Where they differ is the location of their respective roof peaks. The proposed 9 Kent development has a gable end facing the street with a 2' overhanging soffit bringing its roof peak closer to Kent St. The roof peak of the existing 19/21 Kent slopes back away from Kent St. by ~18'.

One must not compare the height of the front roof peak of the proposed 9 Kent development to the sloped back roof peak of the existing 19/21 Kent. The difference in distance to the Kent St curb causes the proposed 9 Kent St development to appear higher in the renderings, but this is not the proper location to compare their heights.

To accurately compare the height of the proposed 9 Kent development to the existing 19/21 Kent, one must locate the roof peak height of the proposed 9 Kent development 20' back from its front peak. This is the location where both roof heights are equally set back from the Kent St. curb. At this location, it can be seen that the proposed 9 Kent development is in fact several feet lower than the existing 19/21 Kent.

II. OLD BUSINESS

C. The request of **Caleb E. Ginsberg and Samantha L. Ginsberg (Owners**), for property located at **303 Bartlett Street** whereas relief is needed to demolish the existing detached garage and construct an addition with attached garage which requires a Variance from Section 10.521 to allow a) seven (7) foot left yard where ten (10) feet is required; b) a two (2) foot right yard where ten (10) feet is required; c) building coverage of 27.5% where 25% is allowed; and 2) Variance from Section 10.321 to allow a nonconforming structure or building to be extended, reconstructed or enlarged without conforming to the requirements of the Ordinance. Said property is located on Assessor Map 162 Lot 13 and lies within the General Residence A (GRA) District. (LU-23-120)

Existing & Proposed Conditions

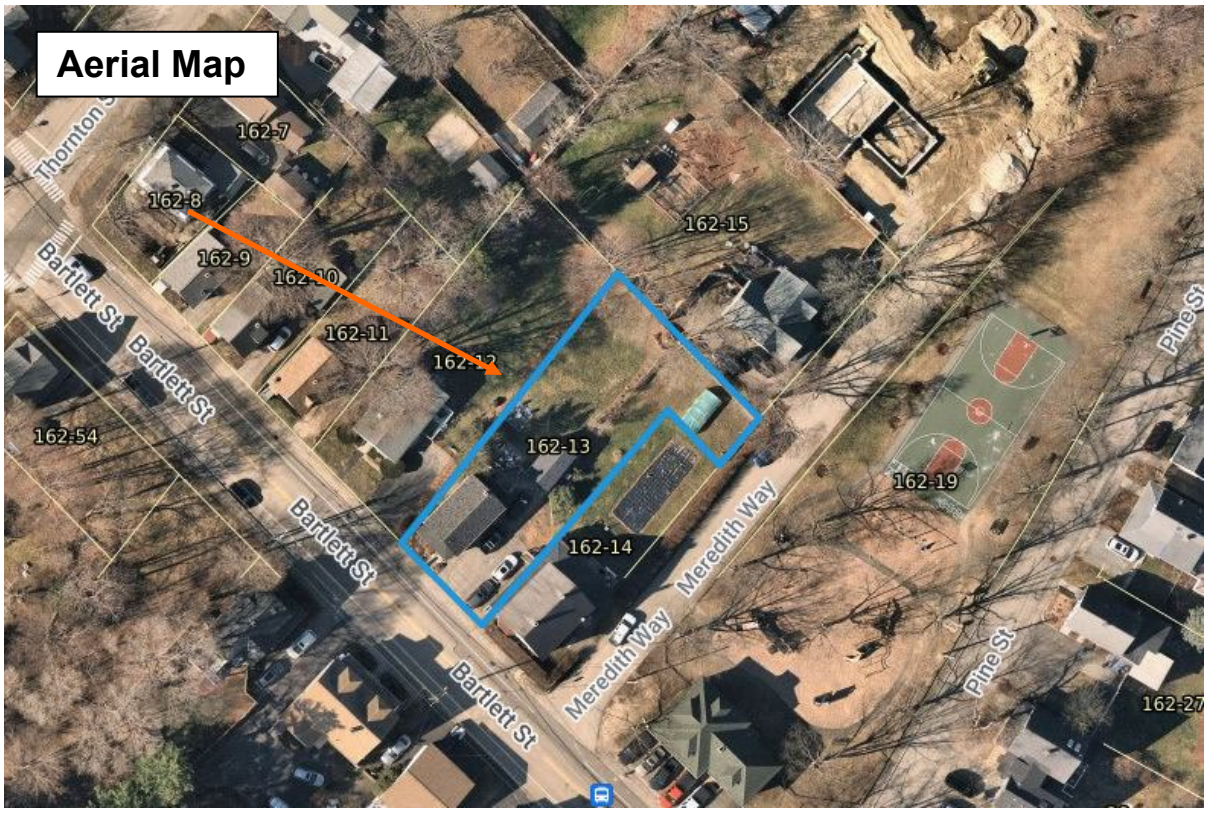
	Existing	Proposed	Permitted / Required	
Land Use:	Single family dwelling	Demo detached garage & addition	Primarily residential	
Lot area (sq. ft.):	4,906	6,665	7,500	min.
Lot Area per Dwelling Unit (sq. ft.):	4,906	6,665	7,500	min.
Street Frontage (ft.):	36	37	100	min.
Lot depth (ft.)	160	160	70	min.
Front Yard (ft.):	5	5	15	min.
Secondary Front Yard (ft)	NA	NA	NA	
Left Yard (ft.):	7	**7**	10	min.
Right Yard (ft.):	0.6	**2**	10	min.
Rear Yard (ft.):	>20	>20	20	min.
Height (ft.):	<35	<35	35	max.
Building Coverage (%):	28.5	**27.5***	25	max.
Open Space Coverage (%):	51.8	57.9	30	min.
Parking	>2	2	2	
Estimated Age of Structure:	1930	Variance request(s) shown in red.		

*Proposed Building Coverage exceeds the maximum permitted due to proposed addition

Other Permits/Approvals Required

- Planning Board - LLA
- Building Permit

Neighborhood Context



Previous Board of Adjustment Actions

No previous BOA history found.

Planning Department Comments

The applicants request includes a lot line adjustment that will transfer 1,759 SF from Parcel A to Map 162, Lot 13 for a proposed lot size of 6,665 SF and 3,838 SF from Parcel A to Map 162, Lot 14 for a total lot size of 8,640 SF, as outlined on sheet 2 of the Lot Line Adjustment Plan. This project will require subdivision review and approval from the Planning Board for the proposed lot line adjustment. The overall building coverage will be reduced with the proposed conditions however the applicant will be increasing the overall building coverage on the lot and will continue to exceed the 25% maximum permitted in the GRA District and therefore requires a variance. The applicant requested relief for a left side setback of 7 feet and a right side setback of 2 feet, but did not include the building coverage variance in their original application materials. The application was re-noticed with the inclusion of the building coverage variance. If the Board wishes to approve this additional variance request, staff recommends the motion and condition as listed below or similar language:

Sample Motion: Approve the variance requests with the following conditions:

1) ***Subdivision review and approval by the Planning Board is required for the proposed lot line adjustment.***

Variance Review Criteria

This application must meet all five of the statutory tests for a **variance** (see Section 10.233 of the Zoning Ordinance):

1. *Granting the variance would not be contrary to the public interest.*
2. *Granting the variance would observe the spirit of the Ordinance.*
3. *Granting the variance would do substantial justice.*
4. *Granting the variance would not diminish the values of surrounding properties.*
5. *The "unnecessary hardship" test:*
   (a) The property has special conditions that distinguish it from other properties in the area.
   AND
   (b) Owing to these special conditions, a fair and substantial relationship does not exist between the general public purposes of the Ordinance provision and the specific application of that provision to the property; and the proposed use is a reasonable one.
   OR
   Owing to these special conditions, the property cannot be reasonably used in strict conformance with the Ordinance, and a variance is therefore necessary to enable a reasonable use of it.

10.235 Certain Representations Deemed Conditions

Representations made at public hearings or materials submitted to the Board by an applicant for a special exception or variance concerning features of proposed buildings, structures, parking or uses which are subject to regulations pursuant to Subsection 10.232 or 10.233 shall be deemed conditions upon such special exception or variance.

REVISED MEMORANDUM

TO: Portsmouth Zoning Board of Adjustment ("ZBA")
FROM: R. Timothy Phoenix, Esquire
Monica F. Kieser, Esquire
DATE: August 30, 2023
RE: Caleb & Samantha Ginsberg (303 Bartlett Street/Map 162, Lot 13)
Peter & Donna Splaine (295/299 Bartlett Street/Map 162, Lot 14)
General Residence A Zone

Dear Chair Eldredge and Zoning Board Members:

On behalf of Caleb & Samantha Ginsberg ("Ginsbergs") & Peter & Donna Splaine ("Splaines") collectively (the "Parties"), we are pleased to submit this memorandum and attached exhibits in support of Ginsberg's request for zoning relief to be considered by the Zoning Board of Adjustment ("ZBA") at its September 19, 2023 meeting in anticipation of the Parties' request for a Lot Line Adjustment.

I. EXHIBITS

A. – Rev. 2 Plan Set – issued by Ross Engineering, LLC.
B. Architectural Plan Set – issued by Charles Hoyt Designs.
C. Site Photographs.
D. Abutter Support Letters.
E. Tax Map 162.

II. PROPERTY/PROJECT

303 Bartlett Street (Map 162 Lot 13) is 4,906 s.f. narrow, existing single-family house lot with 36 ft. of frontage on Bartlett Street belonging to Ginsberg (the "Property" or "Lot 13"). The Property contains a single-family home occupying an approximate 1,085 s.f. footprint, including porches and rear deck and a detached 251 s.f. garage. The home and rear deck encroach on the left side yard setback and garage is located 0.6 ft. from the right side boundary line. 295/299 Bartlett Street is a 4,802 s.f. corner lot with a long existing duplex belonging to Splaine ("Splaine Lot" or "Lot 14"). Ginsbergs purchased Lot 13 in 2021 and seek to expand their home to connect with a new garage increasing living area to accommodate their growing family (the "Ginsberg Project"). They worked with the Splaines, their direct abutter to come up with an acceptable garage addition. Ginsbergs then commissioned a survey which revealed that

the City Tax and GIS Maps incorrectly reflected the actual ownership of the land Ginsbergs, Splaines, and their respective predecessors had occupied for decades.

Below is the intersection of Bartlett Street and Meredith Way as depicted in the City's MapGeo GIS Mapping. Ginsberg's Lot (Lot 13) is outlined in green with Lot 14, belonging to Splaine on the right.

The zoomed in area of the preliminary survey reveals a light-blue, T-shaped parcel with 22.70 ft. of frontage on Bartlett vested in the Heirs of Martineau (See also **Exhibit A**):

Ginsbergs and Splaine have acquired title of the T-shaped parcel of land from the Heirs

of Martineau and now seek to divide it between their respective lots to reflect the historical usage of the T-shaped parcel, and accommodate the Ginsberg garage. Each lot will be rendered more conforming with respect lot size, lot size/dwelling unit and lot frontage as indicated below:

Lot	Existing Lot Area/Frontage	Proposed Lot Area/Frontage
Lot 13 (Ginsberg) (single family)	4, 906 s.f./36.00' on Bartlett	6,665 s.f./37.00' on Bartlett
Lot 14 (Splaine) (duplex)	4,802 s.f./36.00' on Bartlett, 134' on Meredith	8,640 s.f./57.70' on Bartlett and 160' on Meredith

This unique set of circumstances and the Ginsberg Project has been reviewed by City Staff who directed the Parties to apply to the ZBA for the required dimensional relief for the Ginsberg Project in advance of a Planning Board the T-Shaped parcel between the Parties' respective lots. Staff has opined that the following relief is required:

III. RELIEF REQUIRED:

Variance Section/Requirement	Existing	Proposed
PZO §10.520/Table §10.521: Dimensional Standards 10' Side Yard	3.6'/7.0' house (left) 9.3' deck (left) 0.6' garage (right)	3.6/7.0'/10.8' house (left) 2.0' garage addition (right)
PZO §10.520/Table §10.521: Dimensional Standards 25% Building Coverage[1]	1,397 s.f. / 4,906 s.f. lot or 28.5%	1,810 s.f. / 6,665 s.f. lot Or 27.2%
PZO §10.321 Nonconforming Structures No expansion	Remove existing 250 s.f. garage and construct addition with the setbacks and coverage proposed above.	

[1] We question whether zoning relief is required where the acquisition of the additional land, accommodates the new addition and reduces coverage compared to existing conditions. We include the request in an abundance of caution.

IV. OTHER PEMITS REQUIRED

- Planning Board Subdivision/Lot Line Adjustment
- Building Permit

V. VARIANCE REQUIREMENTS

1. **The variances will not be contrary to the public interest.**
2. **The spirit of the ordinance is observed.**

The first step in the ZBA's analysis is to determine whether granting a variance is not contrary to the public interest and is consistent with the spirit and intent of the ordinance, considered together pursuant to Malachy Glen Associates, Inc. v. Town of Chichester, 155 N.H. 102 (2007) and its progeny. Upon examination, it must be determined whether granting a variance "would unduly and to a marked degree conflict with the ordinance such that it violates the ordinance's basic zoning objectives". Id. "Mere conflict with the zoning ordinance is not enough". Id.

In considering whether variances "in a marked degree conflict with the ordinance such that they violate the ordinance's basic zoning objectives". Malachy Glen, *supra,* also held:

> One way to ascertain whether granting the variance would violate basic zoning objectives is to examine whether it would alter the essential character of the locality…. . Another approach to [determine] whether granting the variance violates basic zoning objectives is to examine whether granting the variance would threaten the public health, safety or welfare. (emphasis added)

Here, the Ginsberg and Splaine homes exist on very narrow lots with each family occupying a portion of a T-Shaped parcel located between the respective lots. The Project divides the T-Shaped parcel between the lots making each lot more conforming, as well as adding a garage addition for Ginsbergs. The area of the Ginsberg addition within the left side yard is essentially in the same location as the existing rear deck. The right-side yard setback to the garage increases to 2 ft. from approximately half a foot. All abutters approve of the proposal. **(Exhibit D)**. The acquisition of the T-shaped parcel and the construction of Ginsberg's garage addition will neither "alter the essential character of the locality nor threaten the public health, safety or welfare."

3. Substantial justice will be done by granting the variance.

If "there is no benefit to the public that would outweigh the hardship to the applicant" this factor is satisfied. Harborside Associates, L.P. v. Parade Residence Hotel, L.L.C, 162 N.H. 508 (2011). That is, "any loss to the [applicant] that is not outweighed by a gain to the general public is an injustice". Malachy Glen, supra at 109. Ginsbergs are constitutionally entitled to the use of the lot as they see fit; including redevelopment of the Property for a permitted single-family home with an incorporated garage, fully zoning compliant except for lot size which cannot be changed. "The right to use and enjoy one's property is a fundamental right protected by both the State and Federal Constitutions." N.H. CONST. pt. I, arts. 2, 12; U.S. CONST. amends. V, XIV; Town of Chesterfield v. Brooks, 126 N.H. 64 (1985) at 68. Part I, Article 12 of the New Hampshire Constitution provides in part that "no part of a man's property shall be taken from him, or applied to public uses, without his own consent, or that of the representative body of the people." Thus, our State Constitutional protections limit the police power of the State and its municipalities in their regulation of the use of property. L. Grossman & Sons, Inc. v. Town of Gilford, 118 N.H. 480, 482 (1978). " Property" in the constitutional sense has been interpreted to mean not the tangible property itself, but rather the right to possess, use, enjoy and dispose of it. Burrows v. City of Keene, 121 N.H. 590, 597 (1981). (emphasis added). The Supreme Court has held that zoning ordinances must be reasonable, not arbitrary and must rest upon some ground of difference having fair and substantial relation to the object of the regulation. Simplex Technologies, Inc. v. Town of Newington, 145 N.H. 727, 731 (2001); Chesterfield at 69.

Because the proposed addition matches existing conditions on the left side and increases the right-side yard setback, there is no benefit to the public from denying the variances. In comparison, Ginsbergs will suffer great harm because they will be unable to construct a garage addition with the assent of Splaine and all other abutters. Splaine and Ginsbergs will suffer great harm because they will be unable to present the Subdivision application to the Planning Board which will increase their respective lots. Clearly, there is no benefit to public outweighing the hardship to the applicant if the variances are denied.

4. Granting the variance will not diminish surrounding property values.

Ginsbergs have taken great pains to consult each abutter obtaining assent from all. Many homes in this neighborhood are constructed on small lots with homes or garages located in the side or rear yard setback. **(Exhibit E)**. The proposed addition will improve the functionality of

the Ginsberg home, while the subsequent subdivision will increase the side of both Parties' respective lots improving zoning compliance. Under these circumstances, it is clear that granting a variance for a garage addition with a greater right-side setback than then existing garage will not diminish surrounding property values.

5. Denial of the variances results in an unnecessary hardship.

a. Special conditions distinguish the property/project from others in the area.

At 4,906 s.f., the Ginsberg Property is significantly less than the required lot size and lot area per dwelling unit requirement of 7,500 s.f., Application of the 10 ft. side yard setback to the lot (36 ft. wide at the front increasing to 40 ft. at the rear) results in a building envelope only 16-20 ft. wide. These circumstances combine to create special conditions and drives the request for side yard setback relief. Ginsberg's existing home, if built today, would require similar relief. Splaines' existing lot conforms to frontage requirements, but its present size is even less conforming than Ginsbergs' given the long-existing duplex. Here, both lots will be increased in size and become more conforming, with the Ginsberg lot increasing to 6,665 s.f. gaining a larger backyard. The Splaine lot will reach a conforming lot size of 8,640 s.f. and retain the parking needed to accommodate the duplex.

b. No fair and substantial relationship exists between the general public purposes of the ordinance and its specific application in this instance.

Yard setbacks exist to promote air, light, separation between neighbors and to provide space for stormwater treatment. The existing garage is 0.6 ft. from the existing lot line and pitched to shed 50% of its stormwater very close to the existing lot line. Proposed conditions increase the distance the abutting lot and the roof sheds water toward the front and rear of the Ginsberg Lot, including onto a proposed pervious patio area which can infiltrate stormwater. Because the proposal improves over existing conditions, the purposes of these regulations are met, so there is no reason to apply the strict side setback requirements of the zoning ordinance.

c. The proposed use is reasonable.

If the use is permitted, it is deemed reasonable. Vigeant v. Hudson, 151 N.H. 747 (2005). Proposed is an addition to improve live-ability of a modest single-family home in the GRA District accompanied by a Subdivision of land long utilized and now owned by Ginsbergs and Splaines. Accordingly, the use is reasonable.

VI. CONCLUSION

For all of the reasons stated, Ginsbergs and Splaine respectfully requests that the Portsmouth Zoning Board of Adjustment grant the requested relief and allow this matter to proceed to the Planning Board.

Respectfully submitted,
Caleb & Samantha Ginsberg
Peter & Donna Splaine

By: R. Timothy Phoenix
Monica F. Kieser

LEGEND

- MONUMENT TO BE SET
- MONUMENT FOUND
- UTILITY POLE
- FENCE
- VERTICAL GRANITE CURB
- W — WATER
- S — SEWER
- D — DRAIN

SEE NOTE 2

NOTES

1) OWNERS OF RECORD:
CALEB E. & SAMANTHA L. GINSBERG
TAX MAP 162, LOT 13
303 BARTLETT ST
PORTSMOUTH, NH 03801
RCRD: 6256-0911
AREA: 4,906 SF, 0.11 ACRES

PETER D. & DONNA D. SPLAINE
TAX MAP 162, LOT 14
299 BARTLETT ST
PORTSMOUTH, NH 03801
RCRD: 3429-1079
AREA: 4,802 SF, 0.11 ACRES

PARCEL A WAS CONVEYED TO CALEB GINSBERG, SAMANTHA GINSBERG, PETER SPLAINE, & DONNA SPLAINE BY THE FOLLOWING DEEDS RECORDED IN THE ROCKINGHAM COUNTY REGISTRY OF DEEDS; 6493-1116, 6493-1118, 6493-1120, 6493-1122, 6493-1124, 6493-1126.

PARCEL A AREA: 5,598 SF, 0.13 ACRES

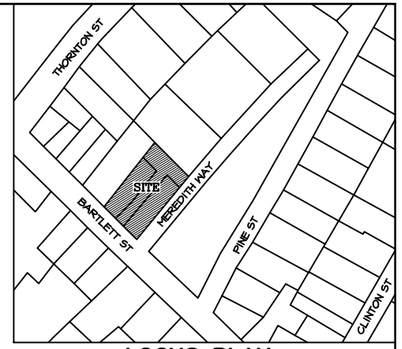
2) BASIS OF BEARING HELD FROM PLAN REFERENCE #1.

3) PARCEL IS IN GENERAL RESIDENCE A (GRA) ZONE:

MINIMUM LOT AREA	7,500 SF
MIN. LOT AREA PER DWELLING UNIT	7,500 SF
MINIMUM FRONTAGE	100 FT
MINIMUM DEPTH	70 FT
SETBACKS:	
FRONT	15 FT
SIDE	10 FT
REAR	20 FT
MAXIMUM BUILDING HEIGHT:	
SLOPED ROOF	35 FT
FLAT ROOF	30 FT
MAXIMUM BUILDING COVERAGE	25%
MINIMUM OPEN SPACE	30%

4) THE PARCEL IS NOT WITHIN A FEMA FLOOD ZONE, AS PER FLOOD INSURANCE RATE MAP #33015C0259F, PANEL 259 OF 681, DATED JANUARY 29, 2021. VERTICAL DATUM IS NAVD 1988.

5) THE TAX MAP DOES NOT MATCH THE DEED DESCRIPTIONS. IT WOULD APPEAR THAT OVER TIME THE REMAINING MARTINEAU PARCEL "PARCEL A" WAS NOT INCLUDED IN THE TAX MAPS.
TIMELINE OF EVENTS:
DEED YEAR
727-190 - 1919 - MARTINEAU IS GRANTED A PARCEL APPROXIMATELY 160'x90'
1048-193 - 1946 - MARTINEAU GRANTS TO SI A PARCEL AT THE CORNER, 36'x134'x36'x134' (LOT 14 ON TAX MAP)
1121-111 - 1948 - MARTINEAU GRANTS TO SI ANOTHER PARCEL, 36 FEET OF FRONTAGE ON BARTLETT, 124 FEET LONG
1121-113 - 1948 - TO SI GRANTS BACK TO MARTINEAU THE CORNER PARCEL (1048-193), BOTH 1948 DEEDS ARE GIVEN TO CORRECT THE DESCRIPTION IN THE 1946 DEED
PROBATE #46632 - 1964 DEATH OF JULIA MARTINEAU, WILL PASSES LAND ON TO HEIRS.
6493-1116 TO 6493-1126 - 2023 - HEIRS OF MARTINEAU GRANT PARCEL A TO THE GINSBERGS AND SPLAINES.



LOCUS PLAN
N.T.S.

REFERENCE PLANS

1) "TAX MAP 162 LOT 16 EXISTING CONDITIONS PLAN 2 LOT SUBDIVISION 77 MEREDITH WAY PORTSMOUTH, NEW HAMPSHIRE" BY TFM. DATED JULY 1, 2022. NOT RECORDED

2) "LOT LINE REVISION PINE STREET PORTSMOUTH, NEW HAMPSHIRE FOR JOYCE M. MAYO & CITY OF PORTSMOUTH" BY DURGIN, VERRA AND ASSOCIATES, INC. DATED JUNE 9, 1993. RCRD D-22643

3) "STREET PLAT OF SPARHAWK, BURKITT, STARK, CLINTON, AND PINE STREETS IN PORTSMOUTH, NEW HAMPSHIRE" BY JOHN W. DURGIN. DATED JULY 1980. FILE NO. 1086D, PLAN NO. 5874-SP. NOT RECORDED.

EXHIBIT A - Rev. 2

ISS.	DATE	DESCRIPTION OF ISSUE
5	8/1/2023	REVISIONS
4	7/26/2023	ZBA SUBMITTAL
3	6/15/2023	PRELIMINARY
2	5/11/2023	PRELIMINARY

SCALE 1" = 20'
CHECKED A.ROSS
DRAWN D.D.D.
CHECKED

GRAPHIC SCALE
20 0 10 20 40 80
(IN FEET)
SCALE: 1" = 20'

ROSS ENGINEERING, LLC
Civil/Structural Engineering & Surveying
909 Islington St
Portsmouth, NH 03801
(603) 433-7560

CLIENT
CALEB E. & SAMANTHA L. GINSBERG
303 BARTLETT ST
PORTSMOUTH, NH 03801

TITLE
EXISTING CONDITIONS
303 BARTLETT ST
PORTSMOUTH, NH 03801
TAX MAP 162, LOT 13

JOB NUMBER	DWG. NO.	ISSUE
22-041	1 OF 3	5

LENGTH TABLE

	BEARING	DISTANCE
L1	S 44°52'12" E	4.99'
L2	N 44°52'12" W	1.55'

LOT AREAS

	EXISTING AREA	CHANGE IN AREA	PROPOSED AREA
LOT 13	4,906 S.F.	+ 1,759 S.F.	6,665 S.F.
LOT 14	4,802 S.F.	+ 3,838 S.F.	8,640 S.F.

NOTES

1) OWNERS OF RECORD:
CALEB E. & SAMANTHA L. GINSBERG
TAX MAP 162, LOT 13
303 BARTLETT ST
PORTSMOUTH, NH 03801
RCRD: 6256-0911
AREA PROPOSED: 6,665 SF, 0.15 ACRES
AREA EXISTING: 4,906 SF, 0.11 ACRES

PETER D. & DONNA D. SPLAINE
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299 BARTLETT ST
PORTSMOUTH, NH 03801
RCRD: 3429-1079
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MINIMUM LOT AREA.....7,500 SF
MIN. LOT AREA PER DWELLING UNIT.....7,500 SF
MINIMUM FRONTAGE.....100 FT
MINIMUM DEPTH.....70 FT
SETBACKS:
FRONT.....15 FT
SIDE.....10 FT
REAR.....20 FT
MAXIMUM BUILDING HEIGHT:
SLOPED ROOF.....35 FT
FLAT ROOF.....30 FT
MAXIMUM BUILDING COVERAGE.....25%
MINIMUM OPEN SPACE.....30%

3) GIS COORDINATES

	NORTHING	EASTING
A - SW CORNER LOT 13	210257.6108	1222455.2493
B - SE CORNER LOT 14	210190.8394	1222522.4010

LEGEND

- MONUMENT TO BE SET
- MONUMENT FOUND
- UTILITY POLE
- FENCE
- VERTICAL GRANITE CURB
- W — WATER
- S — SEWER
- D — DRAIN

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SCALE 1" = 20'
CHECKED A.ROSS
DRAWN D.D.D.
CHECKED

CITY OF PORTSMOUTH PLANNING BOARD

CHAIRPERSON DATE

I ALEX ROSS, HEREBY CERTIFY:
A) THAT THIS SURVEY PLAT WAS PREPARED BY ME OR THOSE UNDER MY DIRECT SUPERVISION.
B) THIS PLAN IS A RESULT OF FIELD SURVEY PERFORMED BY DDD, & ICA DURING JULY OF 2022. THE ERROR OF CLOSURE IS BETTER THAN 1/15,000. SURVEY PER NHLSA STANDARDS; CATEGORY 1, CONDITION 1.

R. ALEX ROSS DATE

GRAPHIC SCALE
20 0 10 20 40 80
(IN FEET)
SCALE: 1" = 20'

ROSS ENGINEERING, LLC
Civil/Structural Engineering & Surveying
909 Islington St.
Portsmouth, NH 03801
(603) 433-7560

CLIENT
CALEB E. & SAMANTHA L. GINSBERG
303 BARTLETT ST
PORTSMOUTH, NH 03801

TITLE
LOT LINE ADJUSTMENT PLAN
303 BARTLETT ST
PORTSMOUTH, NH 03801
TAX MAP 162, LOT 13

JOB NUMBER 22-041 | DWG. NO. 2 OF 3 | ISSUE 5

LENGTH TABLE

	BEARING	DISTANCE
L1	S 44°52'12" E	4.99'
L2	N 44°52'12" W	1.55'

LOT AREAS

	EXISTING AREA	CHANGE IN AREA	PROPOSED AREA
LOT 13	4,906 S.F.	+ 1,759 S.F.	6,665 S.F.
LOT 14	4,802 S.F.	+ 3,838 S.F.	8,640 S.F.

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MIN. LOT AREA PER DWELLING UNIT	7,500 SF
MINIMUM FRONTAGE	100 FT
MINIMUM DEPTH	70 FT
SETBACKS:	
FRONT	15 FT
SIDE	10 FT
REAR	20 FT
MAXIMUM BUILDING HEIGHT:	
SLOPED ROOF	35 FT
FLAT ROOF	30 FT
MAXIMUM BUILDING COVERAGE	25%
MINIMUM OPEN SPACE	30%

3) #303 BARTLETT ST, LOT 13 COVERAGES

BUILDING COVERAGE

EXISTING

HOUSE	692 SF
PORCH/DECK	434 SF
GARAGE	251 SF
STAIRS > 18"	20 SF
COVERAGE	1397 SF/4906 SF =28.5%

PROPOSED

HOUSE	628 SF
PORCH/DECK	134 SF
ADDITION	1,024 SF
BULKHEAD	20 SF
STAIRS > 18"	4 SF
COVERAGE	1810 SF/6665 SF = 27.2%

OPEN SPACE

EXISTING

BUILDING COVERAGE	1,397 SF
GRAVEL	120 SF
ASPHALT	798 SF
PAVERS	4 SF
STAIRS < 18"	44 SF
LOT COVERAGE	2363 SF/4906 SF =48.2%
OPEN SPACE	100% - 48.2% = 51.8%

PROPOSED

BUILDING COVERAGE	1,810 SF
ASPHALT	632 SF
PERVIOUS PAVER PATIO	344 SF
STAIRS < 18"	22 SF
LOT COVERAGE	2808 SF/6665 SF =42.1%
OPEN SPACE	100% - 42.1% = 57.9%

4) #295 & #299 BARTLETT ST, LOT 14 COVERAGES

BUILDING COVERAGE

EXISTING

HOUSE	1,324 SF
PORCH/DECK	183 SF
STAIRS > 18"	33 SF
COVERAGE	1540 SF/4802 SF =32.1%

PROPOSED

HOUSE	1,375 SF
PORCH/DECK	341 SF
SHED	4 SF
STAIRS > 18"	47 SF
COVERAGE	1767 SF/8640 SF = 20.5%

OPEN SPACE

EXISTING

BUILDING COVERAGE	1,540 SF
TARPED SHED	1 SF
ASPHALT	88 SF
CONCRETE	15 SF
STAIRS < 18"	32 SF
LOT COVERAGE	1676 SF/4802 SF =34.9%
OPEN SPACE	100% - 34.9% = 65.1%

PROPOSED

BUILDING COVERAGE	1,767 SF
TARPED SHED	185 SF
ASPHALT	698 SF
CONCRETE	15 SF
PATIO	26 SF
STAIRS < 18"	41 SF
LOT COVERAGE	2732 SF/8640 SF =31.6%
OPEN SPACE	100% - 31.6% = 68.4%

5) GIS COORDINATES

	NORTHING	EASTING
A - SW CORNER LOT 13	210257.6108	1222455.2493
B - SE CORNER LOT 14	210190.8394	1222522.4010

LEGEND

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- FENCE
- VERTICAL GRANITE CURB
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GRAPHIC SCALE
20 0 10 20 40 80
(IN FEET)
SCALE: 1" = 20'

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CHECKED

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303 BARTLETT ST
PORTSMOUTH, NH 03801

TITLE
SITE PLAN
303 BARTLETT ST
PORTSMOUTH, NH 03801
TAX MAP 162, LOT 13

JOB NUMBER 22-041 | DWG. NO. 3 OF 3 | ISSUE 5

R. ALEX ROSS No. 9408 LICENSED PROFESSIONAL ENGINEER - STATE OF NEW HAMPSHIRE

ADDITION AND RENOVATIONS TO THE GINSBERG RESIDENCE

INDEX

A0	COVER SHEET
A1	PROPOSED FRONT & RIGHT ELEVATIONS
A2	PROPOSED LEFT & REARELEVATIONS
A3	PROPOSED 1ST & 2ND FLOOR PLANS
E1	EXISTING PLANS
E2	EXISTING ELEVATIONS

SQUARE FOOT CALCULATIONS

EXISTING 1ST FLOOR SQ. FT.: 680
EXISTING 2ND FLOOR SQ.FT.: 620
PROPOSED 1ST FLOOR SQ. FT.: 660
PROPOSED 2ND FLOOR SQ.FT.: 958

COMBINED EXISTING & PROPOSED 1ST FLOOR SQ. FT.: 1340

COMBINED EXISTING & PROPOSED 2ND FLOOR SQ. FT.: 1578

EXISTING GARAGE SQ FT.: 250
PROPOSED GARAGE SQ FT.: 364

LEGEND

EXISTING

DEMO.

PROPOSED

1 HOUR FIRE RATED WALL

303 BARTLETT STREET
PORTSMOUTH, NH

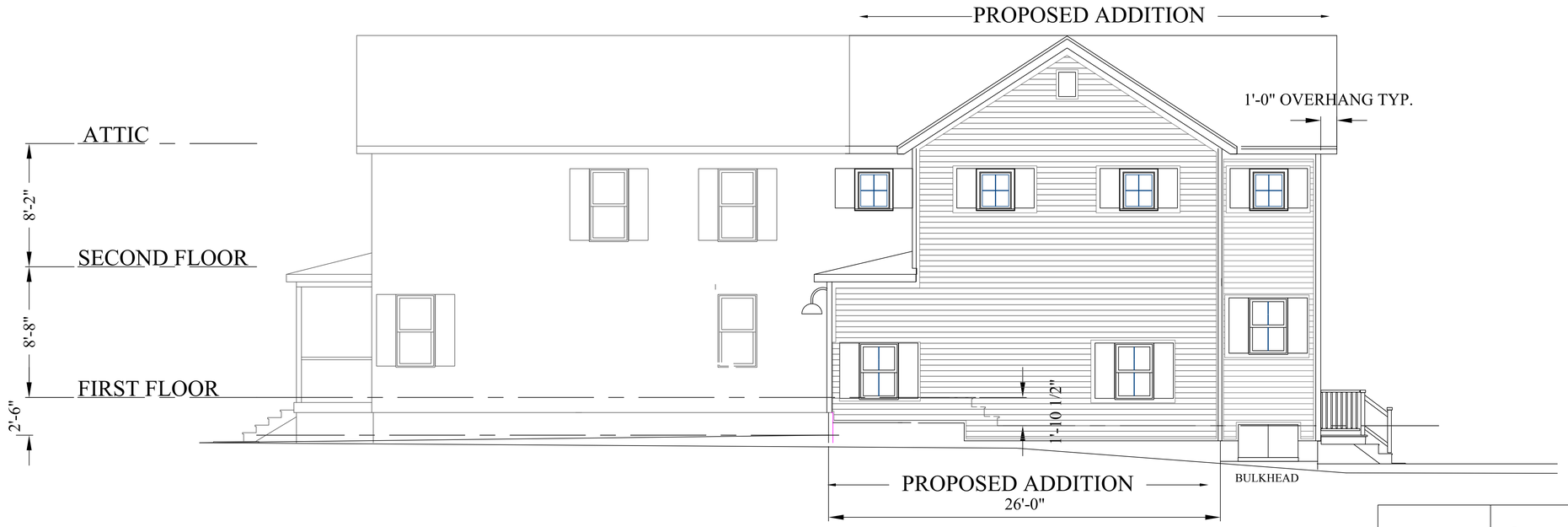
COVER SHEET

CHARLES HOYT DESIGNS
Shingle Style Architecture
P.O.BOX 526
Rye Beach, NH 03871
(603) 812-8016
charleshoytdesigns@hotmail.com

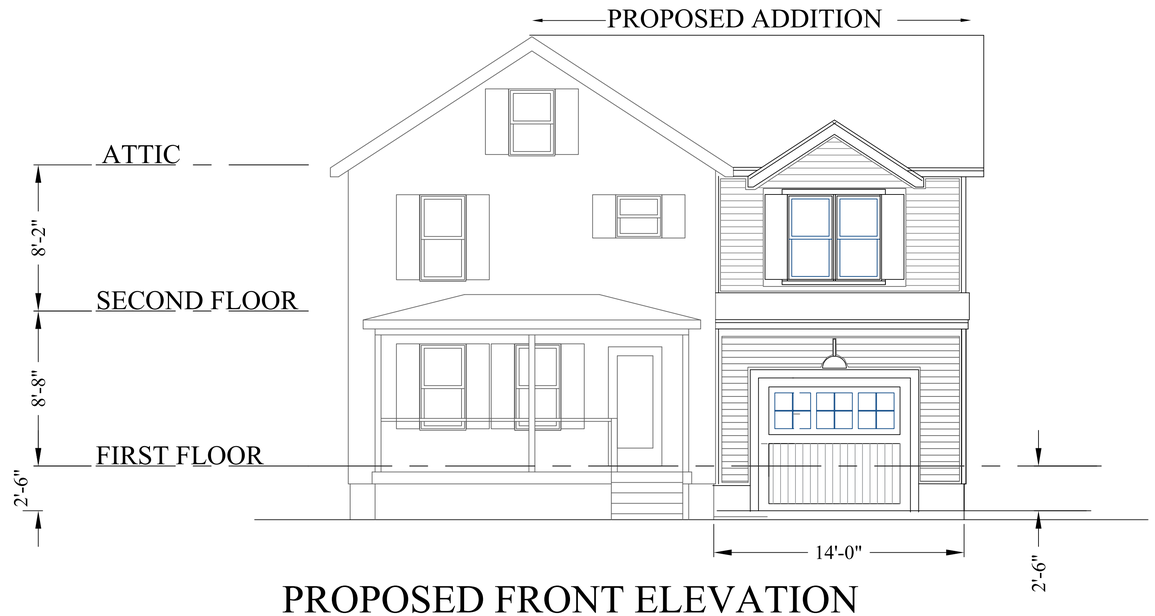
A0

05-12-23

EXHIBIT B



PROPOSED RIGHT ELEVATION



PROPOSED FRONT ELEVATION

ZBA SET

303 BARTLETT STREET
PORTSMOUTH, NH

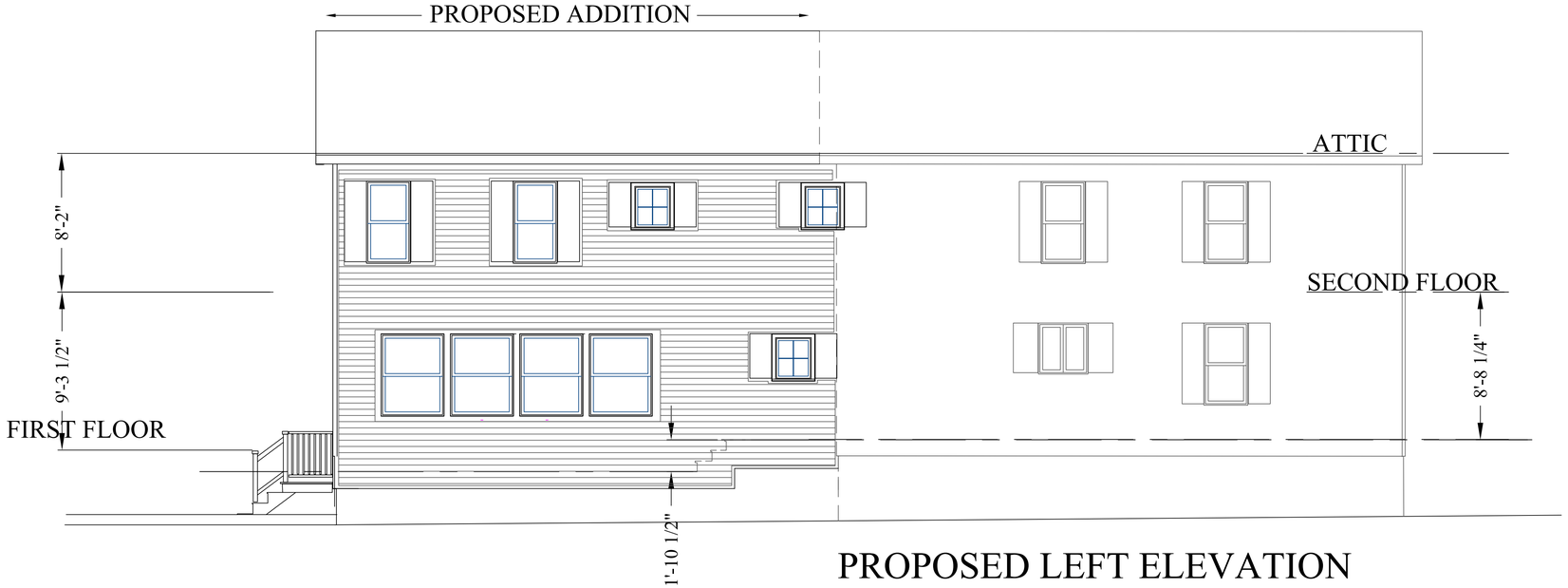
PROPOSED FRONT & RIGHT ELEVATIONS

SCALE: 1/4"=1'-0" on 24" x 36"
SCALE: 1/8"=1'-0" on 11" x 17"

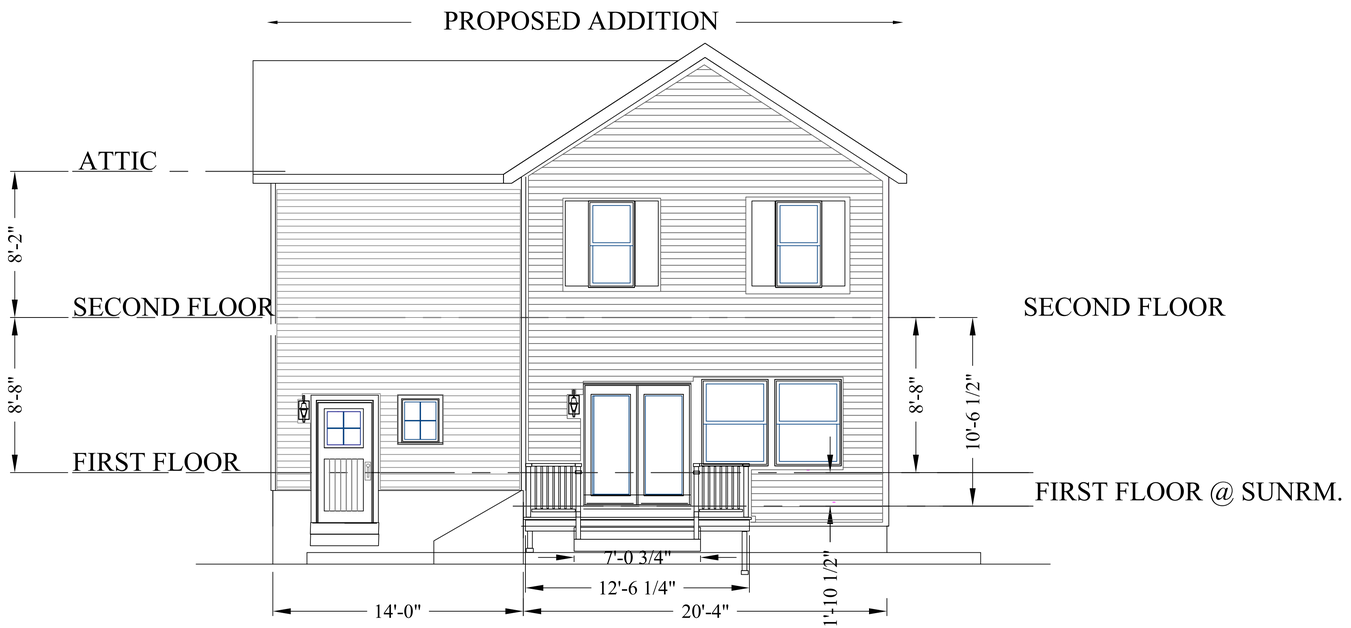
CHARLES HOYT DESIGNS
Shingle Style Architecture
P.O.BOX 526
N. Hampton Beach, NH. 03871
(603) 812-8016
charleshoytdesigns@hotmail.com

7-19-23

A1



PROPOSED LEFT ELEVATION



PROPOSED REAR ELEVATION

ZBA SET

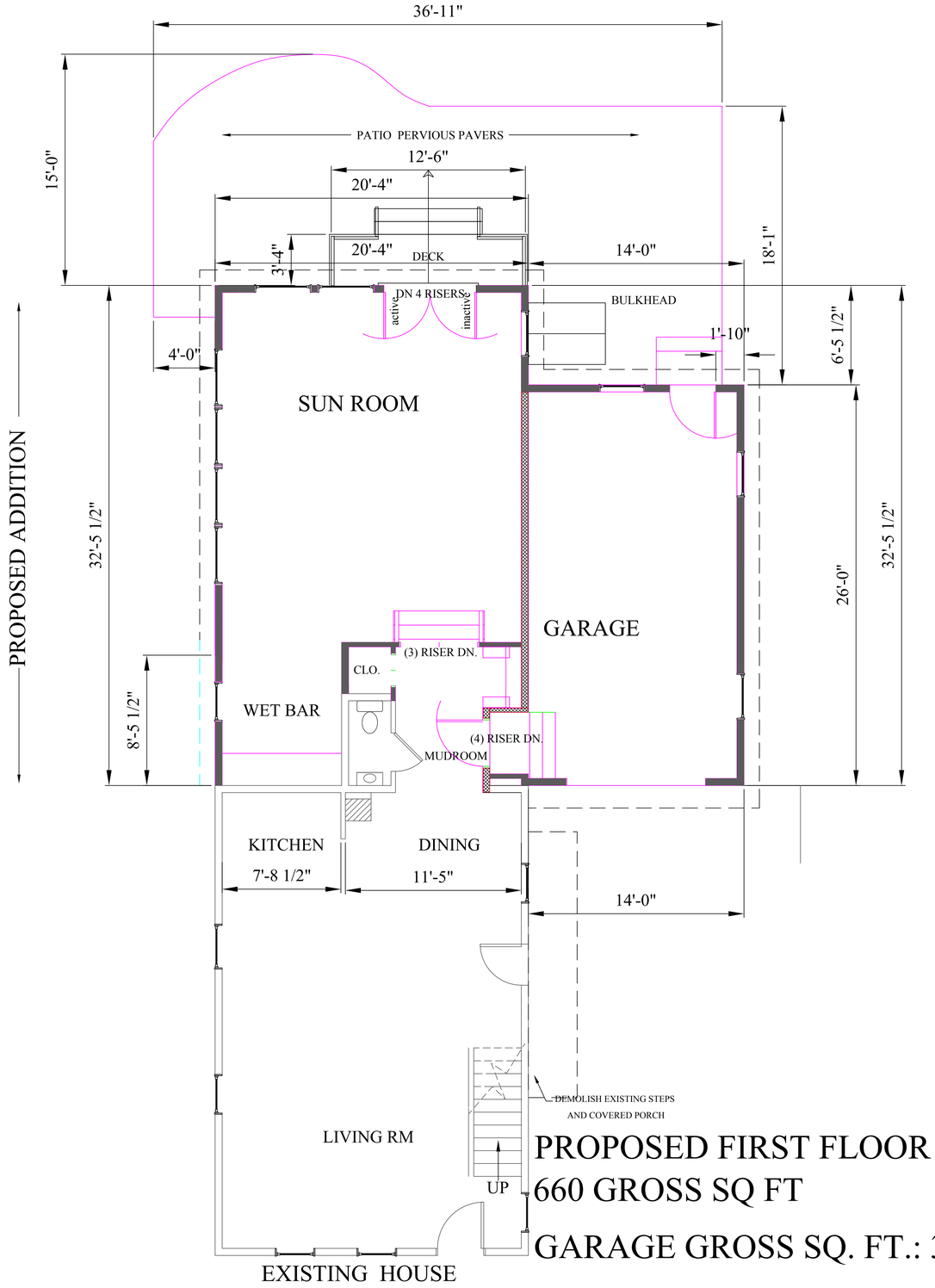
303 BARTLETT STREET
PORTSMOUTH, NH

PROPOSED LEFT & REARELEVATIONS
SCALE: 1/4"=1'-0" on 24" x 36"
SCALE: 1/8"=1'-0" on 11" x 17"

CHARLES HOYT DESIGNS
Shingle Style Architecture
P.O.BOX 526
York Beach, NH 03871
(603)812-8016
charleshoytdesigns@hotmail.com

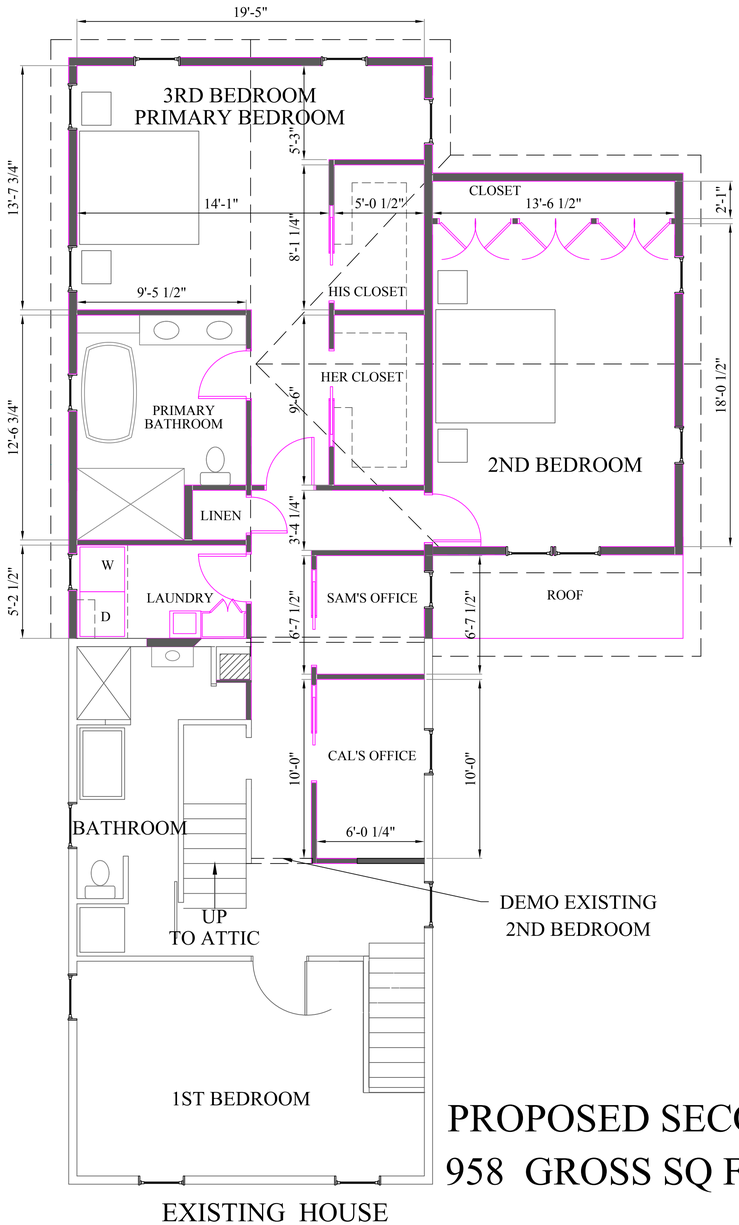
A2

7-19-23



PROPOSED FIRST FLOOR
660 GROSS SQ FT

GARAGE GROSS SQ. FT.: 364



PROPOSED SECOND FLOOR
958 GROSS SQ FT

ZBA SET

303 BARTLETT STREET
PORTSMOUTH, NH

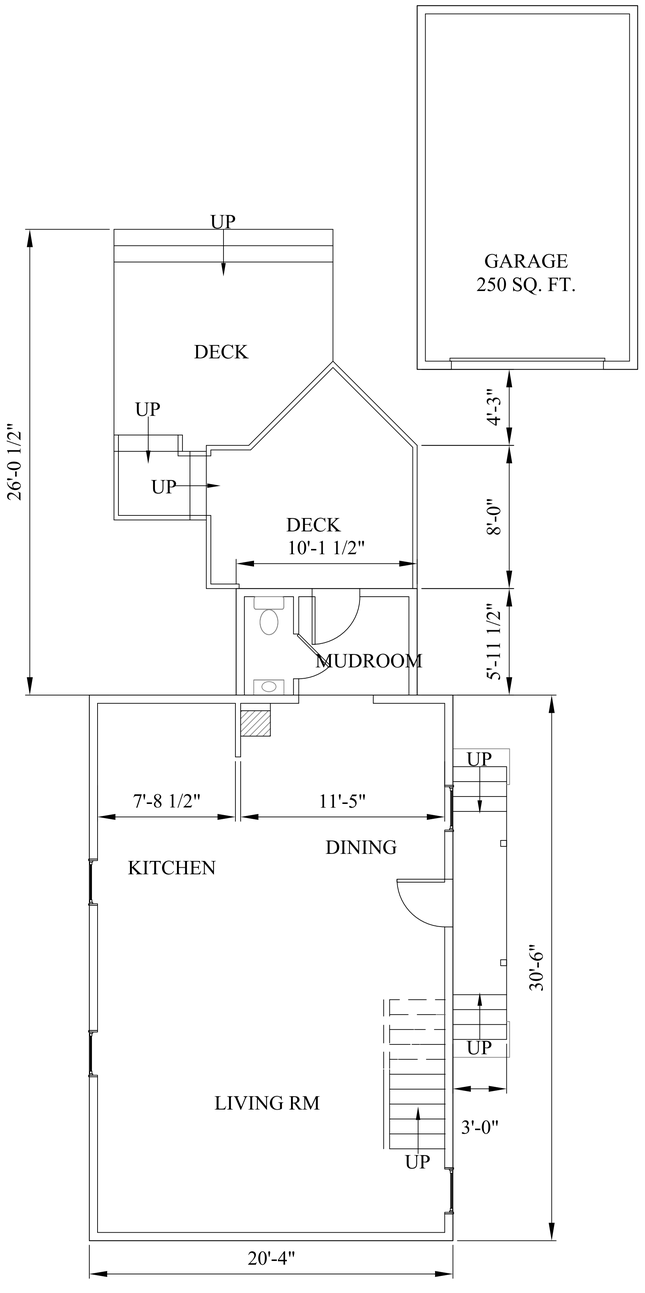
PROPOSED FLOOR PLANS
SCALE: 1/4"=1'-0" on 24" x 36"
SCALE: 1/8"=1'-0" on 11" x 17"

CHARLES HOYT DESIGNS
Shingle Style Architecture
P.O.BOX 536
Dover, NH 03871
(603) 312-8016
charleshoytdesigns@hotmail.com

A3

7-19-23

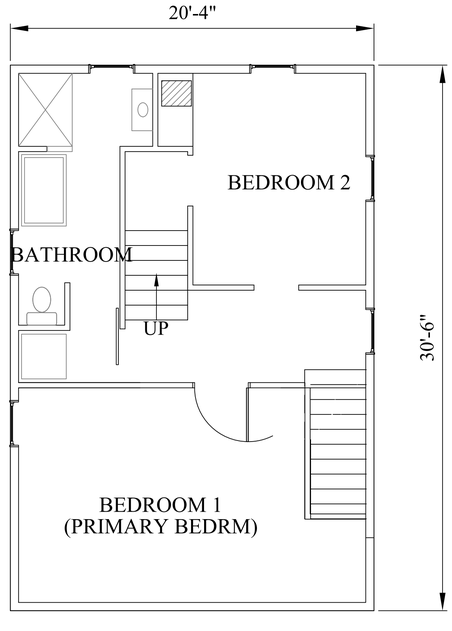
EXISTING RIGHT ELEVATION



EXISTING FIRST FLOOR

EXISTING FIRST FLOOR
680 GROSS SQ FT

EXISTING SECOND FLOOR
620 GROSS SQ FT



EXISTING SECOND FLOOR

ZBA SET

303 BARTLETT STREET
PORTSMOUTH, NH

EXISTING FLOOR PLANS
SCALE: 1/4"=1'-0" on 24" x 36"
SCALE: 1/8"=1'-0" on 11" x 17"

CHARLES HOYT DESIGNS
Shingle Style Architecture
P.O.BOX 526
Rye Beach, NH. 03871
(603) 812-8016
charleshoytdesigns@hotmail.com

E1

7-19-23

EXISTING LEFT ELEVATION

EXISTING REAR ELEVATION

EXISTING FRONT ELEVATION

ZBA SET

303 BARTLETT STREET
PORTSMOUTH, NH

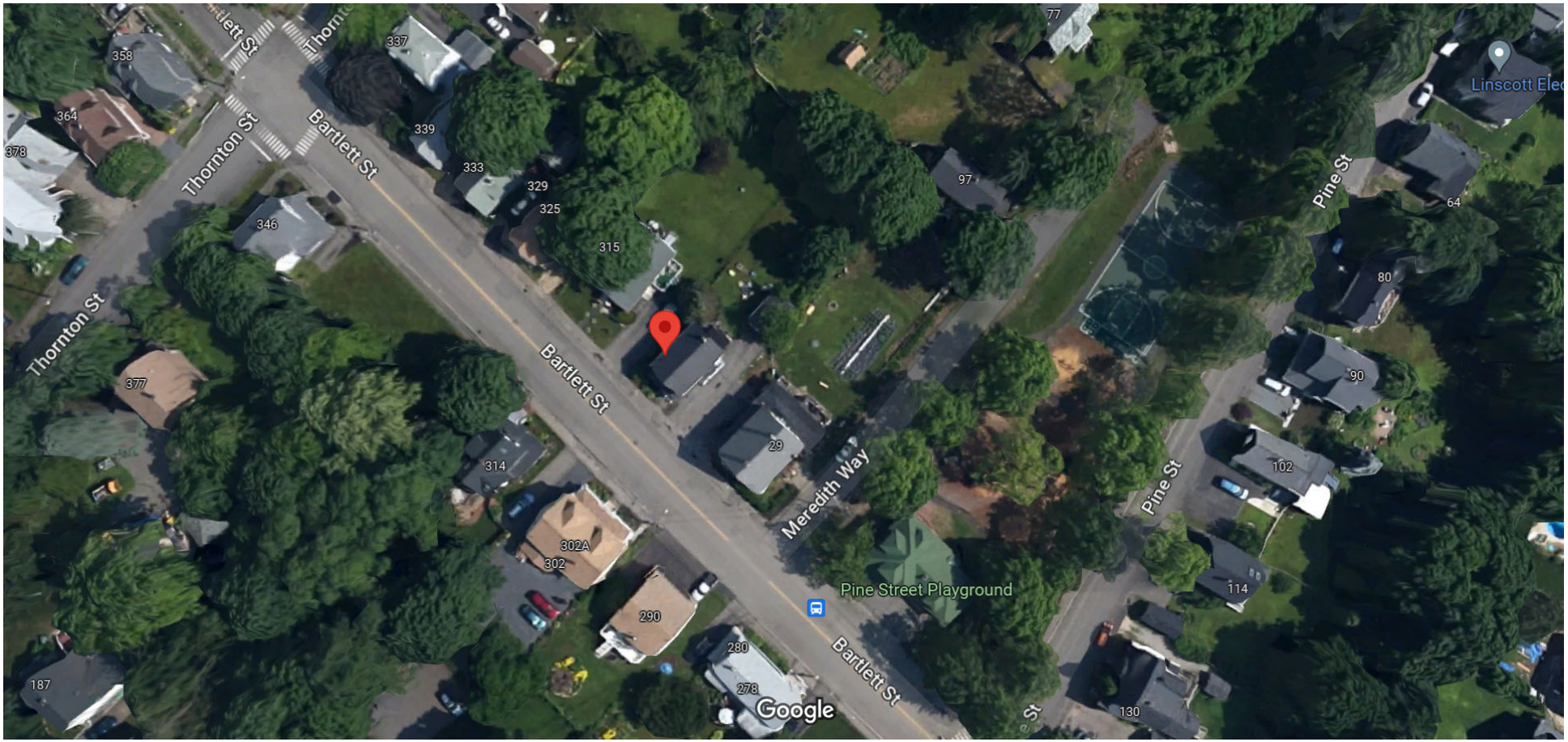
EXISTING ELEVATIONS
SCALE: 1/4"=1'-0" on 24" x 36"
SCALE: 1/8"=1'-0" on 11" x 17"

CHARLES HOYT DESIGNS
Single Style Architecture
P.O.BOX 526
Rye Beach, NH. 03871
(603) 812-8016
charleshoytdesigns@hotmail.com

E2

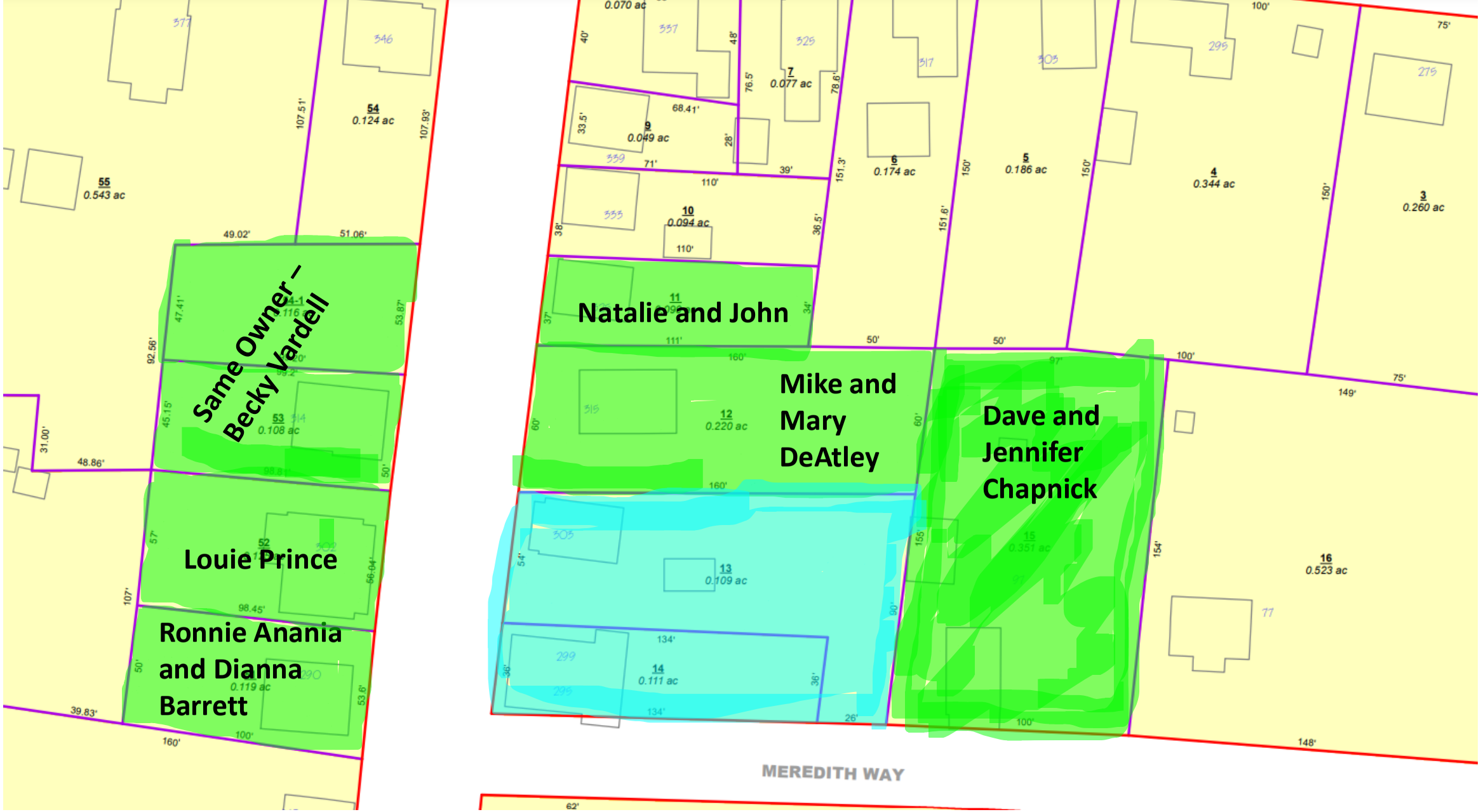
7-19-23

Google Maps 303 Bartlett St



Imagery ©2023 Google, Imagery ©2023 Airbus, Maine GeoLibrary, Maxar Technologies, U.S. Geological Survey, Map data ©2023 50 ft

EXHIBIT C



= Signed Letters of Approval

= Our Properties

EXHIBIT D

July 2023

Re: Abutter Support of Lot Line Adjustment and Home Addition Project (299/303 Bartlett Street)

To Whom It May Concern,

We are Portsmouth residents and homeowners currently living at 290 Bartlett Street. Our property abuts 299 and 303 Bartlett Street (directly across Bartlett Street from 299). We have been informed as to the details of the proposed (1) lot line adjustment between the Splaine and Ginsberg residences at 299 and 303 Bartlett Street, and (2) home addition project the Ginsberg family is planning at 303 Bartlett Street. We offer this letter to confirm our full support of both proposals. We think that both the lot line adjustment and the Ginsberg's home addition project are in the best interest of the neighborhood at large.

Thanks very much your time and consideration of our perspective. Please let us know if you have any questions or concerns.

Sincerely,

DBarrett Ronald Anania

Dianna Barrett & Ronald Anania
290 Bartlett Street
Portsmouth, New Hampshire 03801

July 2023

Re: Abutter Support of Lot Line Adjustment and Home Addition Project (299/303 Bartlett Street)

To Whom It May Concern,

We are Portsmouth residents and homeowners currently living at 325 Bartlett Street. Our property indirectly abuts 299 and 303 Bartlett Street (we are two doors down from 303). We have been informed as to the details of the proposed (1) lot line adjustment between the Splaine and Ginsberg residences at 299 and 303 Bartlett Street, and (2) home addition project the Ginsberg family is planning at 303 Bartlett Street. We offer this letter to confirm our full support of both proposals. We think that both the lot line adjustment and the Ginsberg's home addition project are in the best interest of the neighborhood at large.

Thanks very much your time and consideration of our perspective. Please let us know if you have any questions or concerns.

Sincerely,

Natalie & John
325 Bartlett Street
Portsmouth, New Hampshire 03801

July 2023

Re: Abutter Support of Lot Line Adjustment and Home Addition Project (299/303 Bartlett Street)

To Whom It May Concern,

We are Portsmouth residents and homeowners currently living at 315 Bartlett Street. Our property directly abuts 303 Bartlett Street. We have been informed as to the details of the proposed (1) lot line adjustment between the Splaine and Ginsberg residences at 299 and 303 Bartlett Street, and (2) home addition project the Ginsberg family is planning at 303 Bartlett Street. We offer this letter to confirm our full support of both proposals. We think that both the lot line adjustment and the Ginsberg's home addition project are in the best interest of the neighborhood at large.

Thanks very much your time and consideration of our perspective. Please let us know if you have any questions or concerns.

Sincerely,

Michael and Mary Ann DeAtley
15 Bartlett Street
Portsmouth, New Hampshire 03801

Michael P. DeAtley

DocuSign Envelope ID: 393A15D9-61BF-4EE9-A28E-459CDBC20038

July 2023

Re: Abutter Support of Lot Line Adjustment and Home Addition Project (299/303 Bartlett Street)

To Whom It May Concern,

We are Portsmouth residents and homeowners currently living at 97 Meredith Way. Our property directly abuts 299 and 303 Bartlett Street. We have been informed as to the details of the proposed (1) lot line adjustment between the Splaine and Ginsberg residences at 299 and 303 Bartlett Street, and (2) home addition project the Ginsberg family is planning at 303 Bartlett Street. We offer this letter to confirm our full support of both proposals. We think that both the lot line adjustment and the Ginsberg's home addition project are in the best interest of the neighborhood at large.

Thanks very much your time and consideration of our perspective. Please let us know if you have any questions or concerns.

Sincerely,

DocuSigned by:
David Chapnick
768F993BCC03458...

David & Jennifer Chapnick
97 Meredith Way
Portsmouth, New Hampshire 03801

DocuSign Envelope ID: A54C9358-9AA7-411B-9093-696B55C5BAB3

July 2023

Re: Abutter Support of Lot Line Adjustment and Home Addition Project (299/303 Bartlett Street)

To Whom It May Concern,

I am a Portsmouth resident and homeowner currently living at 314 Bartlett Street. My property abuts 299 and 303 Bartlett Street (I am directly across Bartlett Street from 303). I have been informed as to the details of the proposed (1) lot line adjustment between the Splaine and Ginsberg residences at 299 and 303 Bartlett Street, and (2) home addition project the Ginsberg family is planning at 303 Bartlett Street. I offer this letter to confirm my full support of both proposals. I think that both the lot line adjustment and the Ginsberg's home addition project are in the best interest of the neighborhood at large.

Thanks very much your time and consideration of my perspective. Please don't hesitate to reach out with any questions or concerns.

Sincerely,

DocuSigned by:
Becky Vardell
7182E0676B804C7...

Becky Vardell
314 Bartlett Street
Portsmouth, NH 03801

DocuSign Envelope ID: 7E783826-3809-4EB7-A430-588A02AE9E25

July 2023

Re: Abutter Support of Lot Line Adjustment and Home Addition Project (299/303 Bartlett Street)

To Whom It May Concern,

I am a Portsmouth resident and homeowner currently living at 302 Bartlett Street. My property abuts 299 and 303 Bartlett Street (I am directly across Bartlett Street from 303 and 299). I have been informed as to the details of the proposed (1) lot line adjustment between the Splaine and Ginsberg residences at 299 and 303 Bartlett Street, and (2) home addition project the Ginsberg family is planning at 303 Bartlett Street. I offer this letter to confirm my full support of both proposals. I think that both the lot line adjustment and the Ginsberg's home addition project are in the best interest of the neighborhood at large.

Thanks very much your time and consideration of my perspective. Please don't hesitate to reach out with any questions or concerns.

Sincerely,

DocuSigned by:
Louie Prince
FA74DDBAFECB4BE...

Louie Prince
302 Bartlett Street
Portsmouth, NH 03801

THORNTON ST
WHIPPLE ST
BOYD RD
WOODBURY AVE
BARTLETT ST
MEREDITH WAY
PINE ST
CLINTON ST
COTTAGE ST
MORNING ST
STARK ST

303
299

Partial Legend

See the cover sheet for the complete legend.

- 7-5A — Lot or lot-unit number
- 2.56 ac — Parcel area in acres (ac) or square feet (sf)
- 25 — Address number
- 233-137 — Parcel number from a neighboring map
- 68' — Parcel line dimension
- SIMS AVE — Street name
- Parcel/Parcel boundary
- Parcel/ROW boundary
- Water boundary
- Structure (1994 data)
- Parcel covered by this map
- Parcel from a neighboring map (see other map for current status)

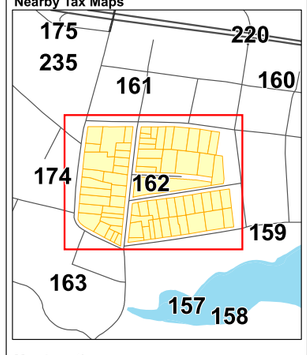
EXHIBIT E

0 50 100 Feet

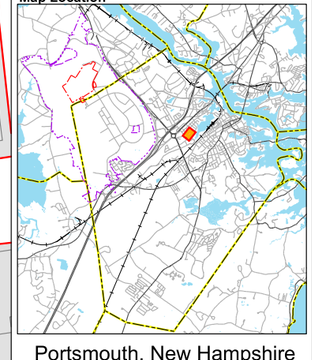
0 20 40 Meters

This map is for assessment purposes only. It is not intended for legal description or conveyance.
Parcels are mapped as of April 1.
Building footprints are 2006 data and may not represent current structures.
Streets appearing on this map may be paper (unbuilt) streets.
Lot numbers take precedence over address numbers. Address numbers shown on this map may not represent posted or legal addresses.

Nearby Tax Maps



Map Location



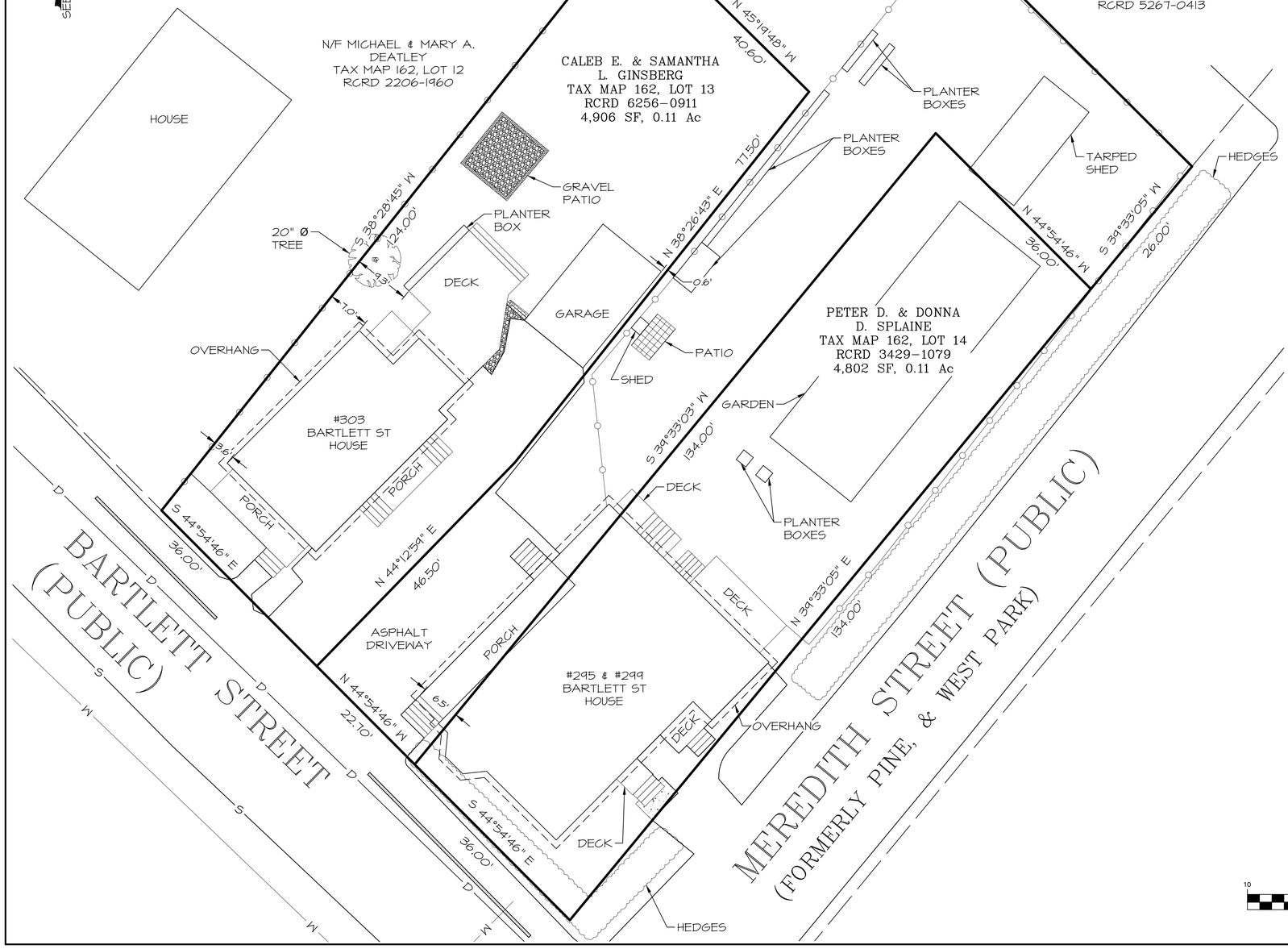
Portsmouth, New Hampshire
2022

Tax Map 162

LEGEND

- MONUMENT TO BE SET
- MONUMENT FOUND
- UTILITY POLE
- FENCE
- VERTICAL GRANITE CURB
- W — WATER
- S — SEWER
- D — DRAIN

SEE NOTE 2



NOTES

1) OWNERS OF RECORD:
CALEB E. & SAMANTHA L. GINSBERG
TAX MAP 162, LOT 13
303 BARTLETT ST
PORTSMOUTH, NH 03801
RCRD: 6256-0911
AREA: 4,906 SF, 0.11 ACRES

PETER D. & DONNA D. SPLAINE
TAX MAP 162, LOT 14
299 BARTLETT ST
PORTSMOUTH, NH 03801
RCRD: 3424-1079
AREA: 4,802 SF, 0.11 ACRES

PARCEL A WAS CONVEYED TO CALEB GINSBERG, SAMANTHA GINSBERG, PETER SPLAINE, & DONNA SPLAINE BY THE FOLLOWING DEEDS RECORDED IN THE ROCKINGHAM COUNTY REGISTRY OF DEEDS; 6493-1116, 6493-1118, 6493-1120, 6493-1122, 6493-1124, 6493-1126.

PARCEL A AREA: 5,598 SF, 0.13 ACRES

2) BASIS OF BEARING HELD FROM PLAN REFERENCE #1.

3) PARCEL IS IN GENERAL RESIDENCE A (GRA) ZONE:

MINIMUM LOT AREA	7,500 SF
MIN. LOT AREA PER DWELLING UNIT	7,500 SF
MINIMUM FRONTAGE	100 FT
MINIMUM DEPTH	70 FT
SETBACKS:	
FRONT	15 FT
SIDE	10 FT
REAR	20 FT
MAXIMUM BUILDING HEIGHT:	
SLOPED ROOF	35 FT
FLAT ROOF	30 FT
MAXIMUM BUILDING COVERAGE	25%
MINIMUM OPEN SPACE	30%

4) THE PARCEL IS NOT WITHIN A FEMA FLOOD ZONE, AS PER FLOOD INSURANCE RATE MAP #33015C0259F, PANEL 259 OF 681, DATED JANUARY 29, 2021. VERTICAL DATUM IS NAVD 1988.

5) THE TAX MAP DOES NOT MATCH THE DEED DESCRIPTIONS. IT WOULD APPEAR THAT OVER TIME THE REMAINING MARTINEAU PARCEL "PARCEL A" WAS NOT INCLUDED IN THE TAX MAPS.
TIMELINE OF EVENTS:
DEED YEAR
727-190 - 1919 - MARTINEAU IS GRANTED A PARCEL APPROXIMATELY 160'x90'
1048-193 - 1946 - MARTINEAU GRANTS TO SI A PARCEL AT THE CORNER, 36'x134'x36'x134' (LOT 14 ON TAX MAP)
1121-111 - 1948 - MARTINEAU GRANTS TO SI ANOTHER PARCEL, 36 FEET OF FRONTAGE ON BARTLETT, 124 FEET LONG
1121-113 - 1948 - TO SI GRANTS BACK TO MARTINEAU THE CORNER PARCEL (1048-193), BOTH 1948 DEEDS ARE GIVEN TO CORRECT THE DESCRIPTION IN THE 1946 DEED
PROBATE #46632 - 1964 DEATH OF JULIA MARTINEAU, WILL PASSES LAND ON TO HEIRS.
6493-1116 TO 6493-1126 - 2023 - HEIRS OF MARTINEAU GRANT PARCEL A TO THE GINSBERGS AND SPLAINES.

LOCUS PLAN
N.T.S.

REFERENCE PLANS

1) "TAX MAP 162 LOT 16 EXISTING CONDITIONS PLAN 2 LOT SUBDIVISION 77 MEREDITH WAY PORTSMOUTH, NEW HAMPSHIRE" BY TFM. DATED JULY 1, 2022. NOT RECORDED

2) "LOT LINE REVISION PINE STREET PORTSMOUTH, NEW HAMPSHIRE FOR JOYCE M. MAYO & CITY OF PORTSMOUTH" BY DURGIN, VERRA AND ASSOCIATES, INC. DATED JUNE 9, 1993. RCRD D-22643

3) "STREET PLAT OF SPARHAWK, BURKITT, STARK, CLINTON, AND PINE STREETS IN PORTSMOUTH, NEW HAMPSHIRE" BY JOHN W. DURGIN. DATED JULY 1980. FILE NO. 108CD, PLAN NO. 5874-SP. NOT RECORDED.

GRAPHIC SCALE
10 0 5 10 20 40
(IN FEET)
SCALE: 1" = 10'

ISS.	DATE	DESCRIPTION OF ISSUE	
6	8/25/2023	REVISIONS	
5	8/1/2023	REVISIONS	
4	7/26/2023	PB SUBMITTAL	
3	6/15/2023	PRELIMINARY	

SCALE 1" = 10'
CHECKED A.ROSS
DRAWN D.D.D.
CHECKED

ROSS ENGINEERING, LLC
Civil/Structural Engineering & Surveying
909 Islington St.
Portsmouth, NH 03801
(603) 433-7560

CLIENT
CALEB E. & SAMANTHA L. GINSBERG
303 BARTLETT ST
PORTSMOUTH, NH 03801

TITLE

EXISTING CONDITIONS

303 BARTLETT ST
PORTSMOUTH, NH 03801
TAX MAP 162, LOT 13

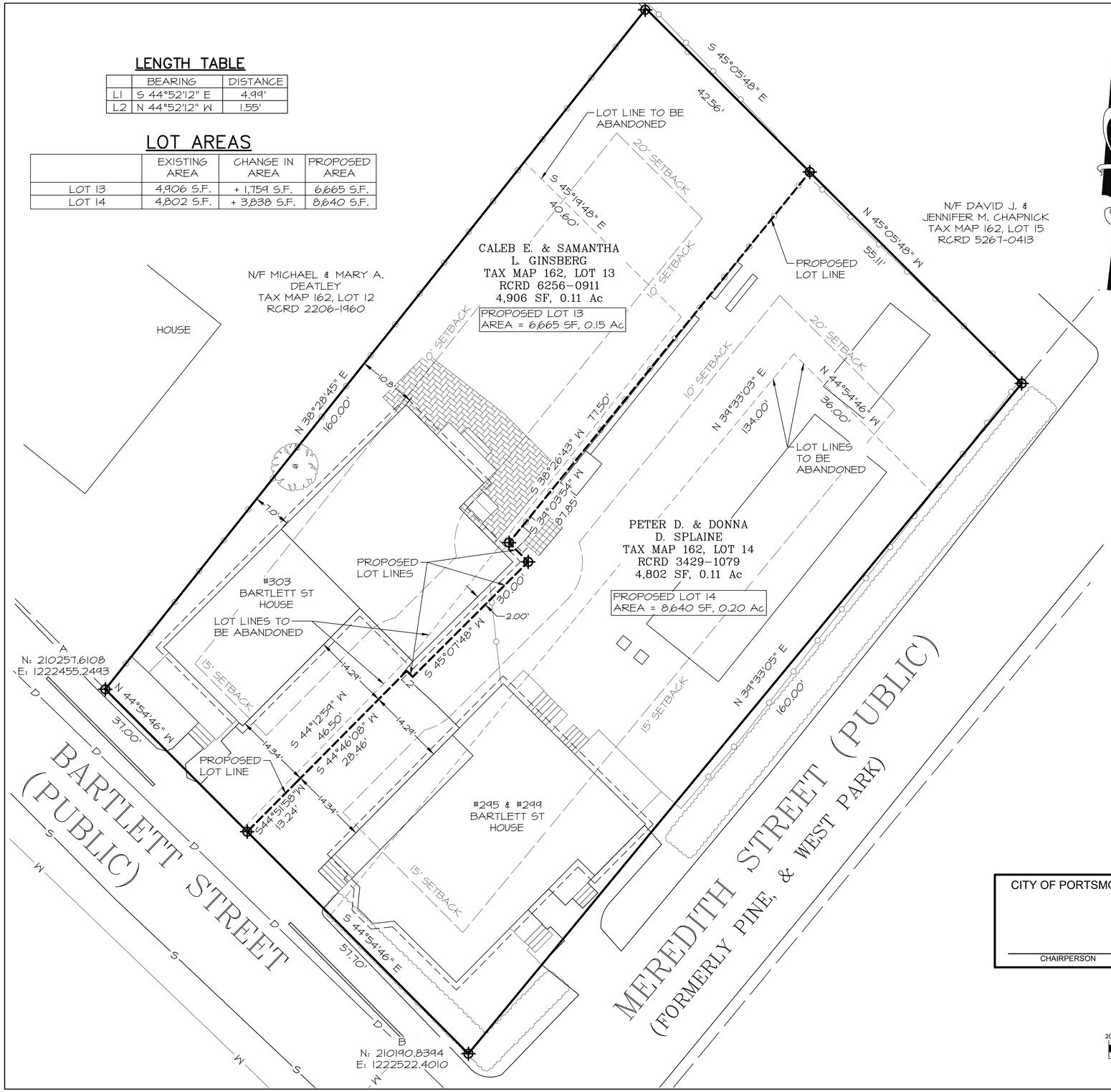
JOB NUMBER	DWG. NO.	ISSUE
22-041	1 OF 3	6

LENGTH TABLE

	BEARING	DISTANCE
L1	S 44°52'12" E	4.99'
L2	N 44°52'12" W	1.55'

LOT AREAS

	EXISTING AREA	CHANGE IN AREA	PROPOSED AREA
LOT 13	4,906 S.F.	+ 1,759 S.F.	6,665 S.F.
LOT 14	4,802 S.F.	+ 3,838 S.F.	8,640 S.F.



NOTES

1) OWNERS OF RECORD:
CALEB E. & SAMANTHA L. GINSBERG
TAX MAP 162, LOT 13
303 BARTLETT ST
PORTSMOUTH, NH 03801
RCRD: 6256-0911
AREA PROPOSED: 6,665 SF, 0.15 ACRES
AREA EXISTING: 4,906 SF, 0.11 ACRES

PETER D. & DONNA D. SPLAINE
TAX MAP 162, LOT 14
299 BARTLETT ST
PORTSMOUTH, NH 03801
RCRD: 3429-1079
AREA PROPOSED: 8,640 SF, 0.20 ACRES
AREA EXISTING: 4,802 SF, 0.11 ACRES

2) PARCEL IS IN GENERAL RESIDENCE A (GRA) ZONE:
MINIMUM LOT AREA.....7,500 SF
MIN. LOT AREA PER DWELLING UNIT.....7,500 SF
MINIMUM FRONTAGE.....100 FT
MINIMUM DEPTH.....70 FT
SETBACKS:
FRONT.....15 FT
SIDE.....10 FT
REAR.....20 FT
MAXIMUM BUILDING HEIGHT:
SLOPED ROOF.....35 FT
FLAT ROOF.....30 FT
MAXIMUM BUILDING COVERAGE.....25%
MINIMUM OPEN SPACE.....30%

3) GIS COORDINATES

	NORTHING	EASTING
A - SW CORNER LOT 13	210257.6108	1222455.2493
B - SE CORNER LOT 14	210190.8394	1222522.4010

LEGEND

- MONUMENT TO BE SET
- MONUMENT FOUND
- UTILITY POLE
- FENCE
- VERTICAL GRANITE CURB
- W — WATER
- S — SEWER
- D — DRAIN

CITY OF PORTSMOUTH PLANNING BOARD

CHAIRPERSON DATE

I ALEX ROSS, HEREBY CERTIFY:
A) THAT THIS SURVEY PLAT WAS PREPARED BY ME OR THOSE UNDER MY DIRECT SUPERVISION.
B) THIS PLAN IS A RESULT OF FIELD SURVEY PERFORMED BY DDD, & ICA DURING JULY OF 2022. THE ERROR OF CLOSURE IS BETTER THAN 1/15,000. SURVEY PER NHLSA STANDARDS; CATEGORY 1, CONDITION 1.

R. ALEX ROSS DATE

GRAPHIC SCALE
20 0 10 20 40 80
(IN FEET)
SCALE: 1" = 20'

ISS.	DATE	DESCRIPTION OF ISSUE
6	8/25/2023	REVISIONS
5	8/1/2023	REVISIONS
4	7/26/2023	PB SUBMITTAL
3	6/15/2023	PRELIMINARY

SCALE 1" = 10'
CHECKED A.ROSS
DRAWN D.D.D.
CHECKED

ROSS ENGINEERING, LLC
Civil/Structural Engineering & Surveying
909 Islington St.
Portsmouth, NH 03801
(603) 433-7560

CLIENT
CALEB E. & SAMANTHA L. GINSBERG
303 BARTLETT ST
PORTSMOUTH, NH 03801

TITLE
LOT LINE ADJUSTMENT PLAN
303 BARTLETT ST
PORTSMOUTH, NH 03801
TAX MAP 162, LOT 13

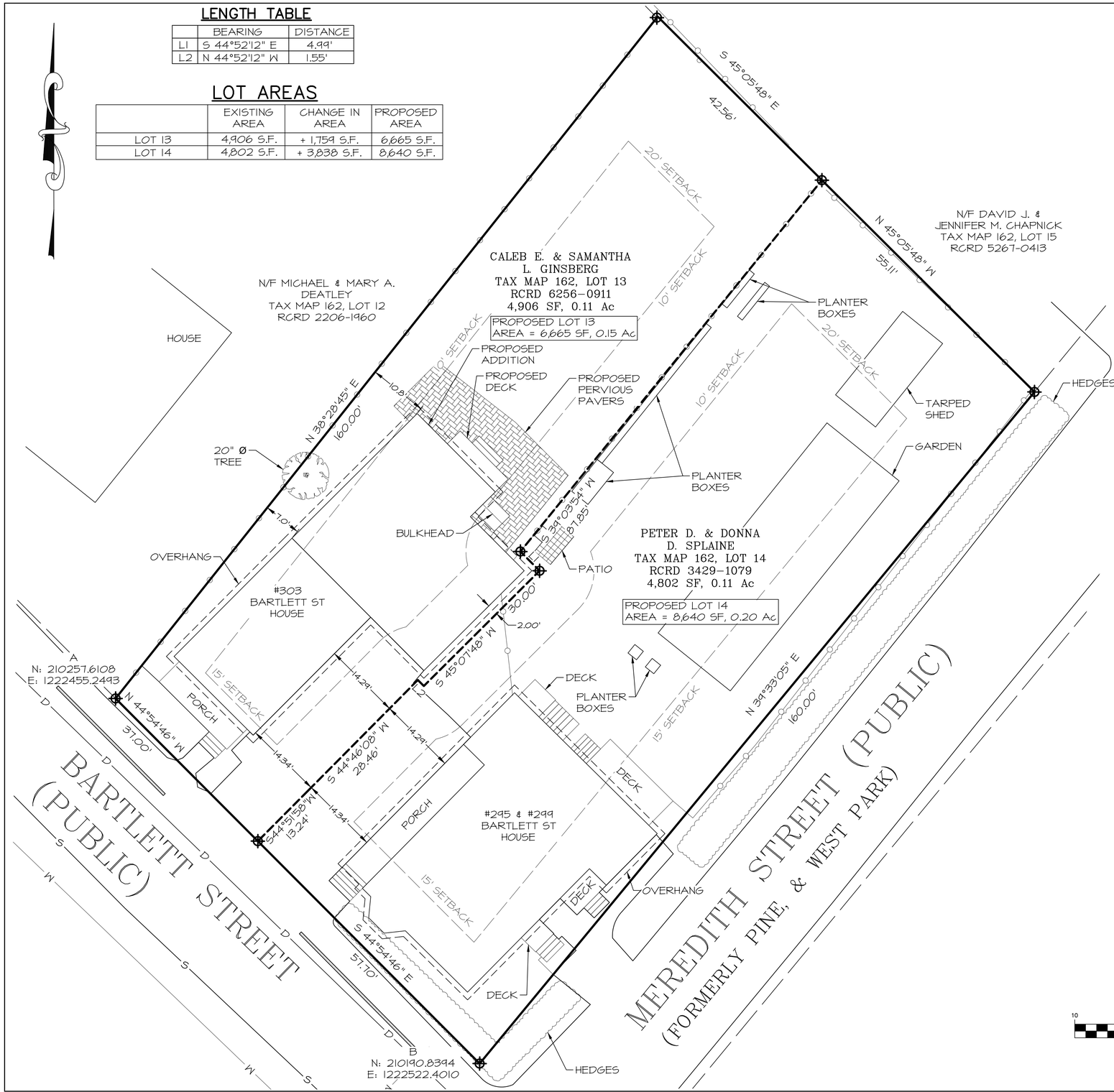
JOB NUMBER	DWG. NO.	ISSUE
22-041	2 OF 3	6

LENGTH TABLE

	BEARING	DISTANCE
L1	S 44°52'12" E	4.99'
L2	N 44°52'12" W	1.55'

LOT AREAS

	EXISTING AREA	CHANGE IN AREA	PROPOSED AREA
LOT 13	4,906 S.F.	+ 1,759 S.F.	6,665 S.F.
LOT 14	4,802 S.F.	+ 3,838 S.F.	8,640 S.F.



NOTES

1) OWNERS OF RECORD:
CALEB E. & SAMANTHA L. GINSBERG
TAX MAP 162, LOT 13
303 BARTLETT ST
PORTSMOUTH, NH 03801
RCRD: 6256-0911
AREA PROPOSED: 6,665 SF, 0.15 ACRES
AREA EXISTING: 4,906 SF, 0.11 ACRES

PETER D. & DONNA D. SPLAINE
TAX MAP 162, LOT 14
299 BARTLETT ST
PORTSMOUTH, NH 03801
RCRD: 3429-1079
AREA PROPOSED: 8,640 SF, 0.20 ACRES
AREA EXISTING: 4,802 SF, 0.11 ACRES

2) PARCEL IS IN GENERAL RESIDENCE A (GRA) ZONE:

MINIMUM LOT AREA	7,500 SF
MIN. LOT AREA PER DWELLING UNIT	7,500 SF
MINIMUM FRONTAGE	100 FT
MINIMUM DEPTH	70 FT
SETBACKS:	
FRONT	15 FT
SIDE	10 FT
REAR	20 FT
MAXIMUM BUILDING HEIGHT:	
SLOPED ROOF	35 FT
FLAT ROOF	30 FT
MAXIMUM BUILDING COVERAGE	25%
MINIMUM OPEN SPACE	30%

3) #303 BARTLETT ST, LOT 13 COVERAGES

BUILDING COVERAGE

EXISTING

HOUSE	692 SF
PORCH/DECK	434 SF
GARAGE	251 SF
STAIRS > 18"	20 SF
COVERAGE 1397 SF/4906 SF = 28.5%	

PROPOSED

HOUSE	628 SF
PORCH/DECK	134 SF
ADDITION	1,024 SF
BULKHEAD	20 SF
STAIRS > 18"	4 SF
COVERAGE 1810 SF/6665 SF = 27.2%	

OPEN SPACE

EXISTING

BUILDING COVERAGE	1,397 SF
GRAVEL	120 SF
ASPHALT	798 SF
PAVERS	4 SF
STAIRS < 18"	44 SF
LOT COVERAGE 2363 SF/4906 SF = 48.2%	
OPEN SPACE = 100% - 48.2% = 51.8%	

PROPOSED

BUILDING COVERAGE	1,810 SF
ASPHALT	632 SF
PERVIOUS PAVER PATIO	344 SF
STAIRS < 18"	22 SF
LOT COVERAGE 2808 SF/6665 SF = 42.1%	
OPEN SPACE = 100% - 42.1% = 57.9%	

4) #295 & #299 BARTLETT ST, LOT 14 COVERAGES

BUILDING COVERAGE

EXISTING

HOUSE	1,324 SF
PORCH/DECK	183 SF
STAIRS > 18"	33 SF
COVERAGE 1540 SF/4802 SF = 32.1%	

PROPOSED

HOUSE	1,375 SF
PORCH/DECK	341 SF
SHED	4 SF
STAIRS > 18"	47 SF
COVERAGE 1767 SF/8640 SF = 20.5%	

OPEN SPACE

EXISTING

BUILDING COVERAGE	1,540 SF
TARPED SHED	1 SF
ASPHALT	88 SF
CONCRETE	15 SF
STAIRS < 18"	32 SF
LOT COVERAGE 1676 SF/4802 SF = 34.9%	
OPEN SPACE = 100% - 34.9% = 65.1%	

PROPOSED

BUILDING COVERAGE	1,767 SF
TARPED SHED	185 SF
ASPHALT	698 SF
CONCRETE	15 SF
PATIO	26 SF
STAIRS < 18"	41 SF
LOT COVERAGE 2732 SF/8640 SF = 31.6%	
OPEN SPACE = 100% - 31.6% = 68.4%	

5) GIS COORDINATES

	NORTHING	EASTING
A - SW CORNER LOT 13	210257.6108	1222455.2493
B - SE CORNER LOT 14	210190.8394	1222522.4010

LEGEND

- MONUMENT TO BE SET
- MONUMENT FOUND
- UTILITY POLE
- FENCE
- VERTICAL GRANITE CURB
- W — WATER
- S — SEWER
- D — DRAIN

GRAPHIC SCALE

10 0 5 10 20 40

(IN FEET)
SCALE: 1" = 10'

R. ALEX ROSS No. 9409 LICENSED PROFESSIONAL ENGINEER - STATE OF NEW HAMPSHIRE -

ISS.	DATE	DESCRIPTION OF ISSUE
6	8/25/2023	REVISIONS
5	8/1/2023	REVISIONS
4	7/26/2023	PB SUBMITTAL
3	6/15/2023	PRELIMINARY

SCALE 1" = 10'
CHECKED A.ROSS
DRAWN D.D.D.
CHECKED

ROSS ENGINEERING, LLC
Civil/Structural Engineering & Surveying
909 Islington St.
Portsmouth, NH 03801
(603) 433-7560

CLIENT
CALEB E. & SAMANTHA L. GINSBERG
303 BARTLETT ST
PORTSMOUTH, NH 03801

TITLE

SITE PLAN

303 BARTLETT ST
PORTSMOUTH, NH 03801
TAX MAP 162, LOT 13

JOB NUMBER	DWG. NO.	ISSUE
22-041	3 OF 3	6

III. NEW BUSINESS

A. The request of **J & J's Drop and Drive LLC (Owner),** for property located at **459 Islington Street** whereas relief is needed to install a 54 square foot mural which requires the following: 1) Variance from Section 10.1251.10 to allow 54 square feet of aggregate sign area where 48.5 is allowed; and 2) Variance from Section 10.1251.20 to allow 54 square feet of individual sign area where 16 square feet is allowed. Said property is located on Assessor Map 157 Lot 7 and lies within the Character District 4-L2 (CD4-L2) and Historic District. (LU-23-129)

Existing & Proposed Conditions

	Existing	Proposed	Permitted / Required
Land Use:	Commercial	Add 54 square foot mural to the exterior or the building*	Mixed Uses
Aggregate Sign Area (sq. ft.):	0	**54**	48.5 max.
Individual Sign Area (sq. ft.):	n/a	**54**	16 max.
Free Standing Sign Area (sq. ft) (Does not count toward aggregate area)	20	20	20
Estimated Age of Structure:	1880	Variance request(s) shown in red.	

Other Permits/Approvals Required

- Sign Permit
- Historic District Commission Review

Neighborhood Context

Previous Board of Adjustment Actions

November 26, 1968 – The Board of Adjustment **granted** the request to construct a one and two story addition to the existing office and warehouse with the following condition:

1) The drainage facilities receive the approval of the City Engineer.

Planning Department Comments

The applicant is requesting to install a six foot by 9 foot mural to the side of the existing structure. This mural is considered a wall sign and is located in Sign District 2. There is one existing freestanding sign on the property which equals 20 square feet of sign area, however, freestanding signs do not count towards aggregate sign area on a site. For the complete set of sign requirements, please see Article 12 of the Zoning Ordinance.

Variance Review Criteria

This application must meet all five of the statutory tests for a **variance** (see Section 10.233 of the Zoning Ordinance):

1. *Granting the variance would not be contrary to the public interest.*
2. *Granting the variance would observe the spirit of the Ordinance.*
3. *Granting the variance would do substantial justice.*
4. *Granting the variance would not diminish the values of surrounding properties.*
5. *The "unnecessary hardship" test:*
   (a) The property has special conditions that distinguish it from other properties in the area.
   AND
   (b) Owing to these special conditions, a fair and substantial relationship does not exist between the general public purposes of the Ordinance provision and the specific application of that provision to the property; and the proposed use is a reasonable one.
   OR
   Owing to these special conditions, the property cannot be reasonably used in strict conformance with the Ordinance, and a variance is therefore necessary to enable a reasonable use of it.

10.235 Certain Representations Deemed Conditions

Representations made at public hearings or materials submitted to the Board by an applicant for a special exception or variance concerning features of proposed buildings, structures, parking or uses which are subject to regulations pursuant to Subsection 10.232 or 10.233 shall be deemed conditions upon such special exception or variance.

Liars Bench Brewery at 459 Islington Street
Application for Mural Approval

This application is for the approval of 6'x 9' mural to be mounted on a portion the west side of the brewery. The building wall faces the parking lot and the access drive of the abutting bank.

The building is a concrete block building with blue vinyl siding. The Mural will be a polyvinyl graphic adhered to a thin sheet of ¼" metal with a pipe frame and mounted through the vinyl siding and secured to the concrete block. It will be nearly out of street view as it will 100' from Islington Street.

This mural has the following benefits to the community:

- This mural will enhance the entrance experience of the site users.
- This mural will provide an education opportunity for the public.
- The mural honors author Sara Orne Jewett, a person of literary distinction in the history to the Seacoast community.
- This mural promotes the concept of *History Through Art*.
- This mural will call attention to the many women in the history of the Seacoast who contributed to the quality of life of the area.
- The mural will be "consistent with the special and defining character of the surrounding properties."

AERIAL VIEW

LIARS BENCH BREWERY

459 ISLINGTON STREET
PORTSMOUTH, NH

terra *firma*
landscape architecture
163.a court street · portsmouth, nh 03801
office 603.430.8388 | terrence@terrafirmalandarch.com

EXISTING SITE

LIARS BENCH BREWERY

459 ISLINGTON STREET
PORTSMOUTH, NH

terra *firma*
landscape architecture
163.a court street · portsmouth, nh 03801
office 603.430.8388 | terrence@terrafirmalandarch.com

TOP VIEW

108"

71 1/2"

END VIEW

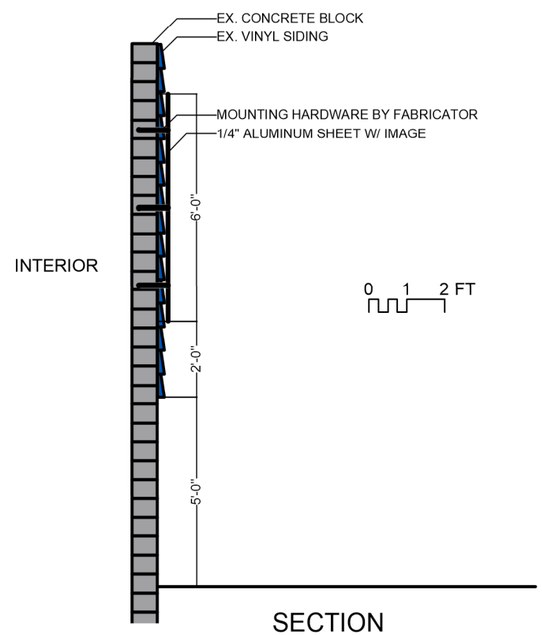
.100 ALUMINUM PANEL WITH FULL COLOR PRINTED VINYL

2" LEG OUT ANGLES FOR WALL MOUNT

NOT-LIT WALL MURAL PANEL
(1) REQUIRED

LIARS BENCH BREWERY

459 ISLINGTON STREET
PORTSMOUTH, NH



SECTION

NEOKRAFT SIGNS

Neokraft Signs, Inc.
647 Pleasant St | 70 Commercial St
Lewiston, Maine 04240
207.782.9654 | neokraft.com

Custom Sign Fabrication

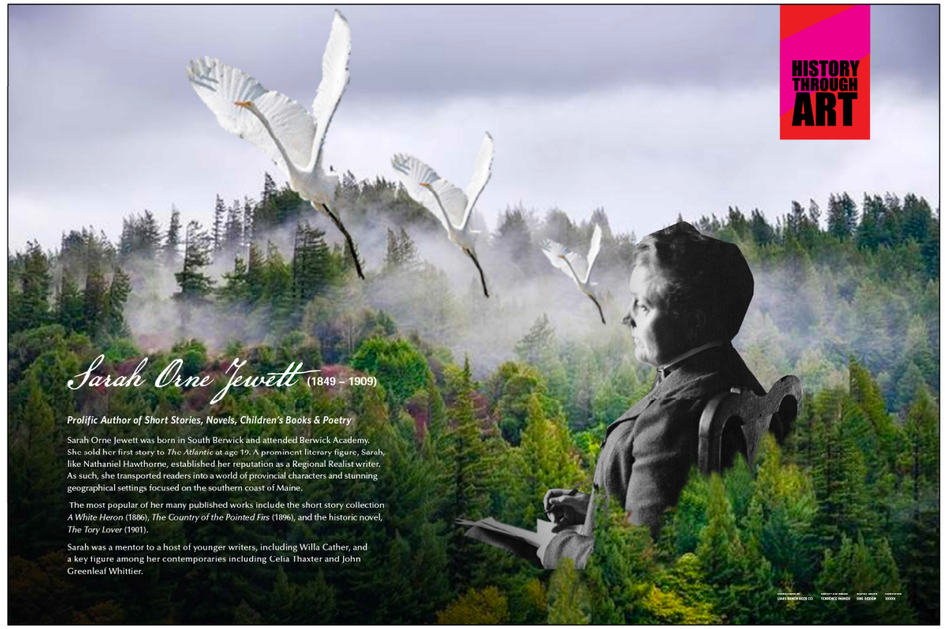
These plans are the exclusive property of Neokraft Signs, Inc. and are the result of the original work of its employees. They are submitted to Neokraft's client for the sole purpose of consideration of whether to purchase these plans or to purchase from Neokraft a sign manufactured according to these plans.

Distribution or exhibition of these plans to anyone other than employees of said client, or use of these plans to construct a sign similar to the one embodied herein, is expressly forbidden. In the event that such exhibition or construction occurs, Neokraft expects to be reimbursed $1500 in compensation for time and effort entailed in creating these plans.

PRESENTATION

LIAR'S BENCH
@12479

ACCT ID:	013447
LOCATION:	459 ISLINGTON STREET
	PORTSMOUTH, NH
DRAWING NO:	1 OF
DRAWN BY:	AB REP.: AB
DATE:	08.08.2023
QUOTE:	@12479
GEN REF:	



MURAL

Sarah Orne Jewett (1849 1909)
Prolific Writer of Short Stories, Novels, Children's Books & Poetry

Sarah Orne Jewett was born in South Berwick, Maine where she attended Berwick Academy. Her first story was published by *The Atlantic* when she was 19. An abiding love of the natural world, so evident in her writings, was nurtured by her physician father, who is featured in her short story, *A Country Doctor* (1884).

A noted Realist and Regional writer, Sarah placed her stories on the southern coast of Maine. Her stories presented distinct, often kindly characters, that included natural surroundings. The most popular of her many published works include the short story collection *A White Heron* (1886), *The Country of the Pointed Firs* (1896) and the historic novel, *The Tory Lover* (1901).

She was a mentor to a host of younger writers, including Willa Cather, and an associate of contemporary writers Celia Thaxter, Thomas Bailey Aldrich, and John Greenleaf Whittier. Sarah's writing career ended in 1902 after a debilitating carriage accident. Sarah was the partner of Annie Adams Fields of Boston for more than two decades, who was with her when she died at age 59. Her South Berwick home is a museum, open to the public. Her papers are kept at Harvard Library.

terra *firma*
landscape architecture
163.a court street · portsmouth, nh 03801
office 603.430.8388 | terrence@terrafirmalandarch.com

The Mural at Liars Bench Brewery: BOA Application

Variance Criteria

1. The variance is not contrary to the public interest.
2. The spirit of the ordinance is observed.
   - Eclectic mixed-use neighborhood surrounded by office, retail, municipal and residential uses
   - Variety of signage, graphics, statues, and memorials in the immediate commercial area
   - Enhances the character of the region by promoting its rich history
   - Location not on street frontage does not create a hazard or distraction
   - Size of mural does not create a hazard or distraction as the design is subdued in its color scheme and content

3. Substantial justice is done.
   - There is no obvious harm to the public that would be created by the installation of this mural (see above comments for 1. and 2.)
   - There would be a benefit to the public due to the educational components of the mural and its tasteful design

4. The values of surrounding properties are not diminished.
   - This is a mixed-use neighborhood with an abundance of signage, colorful graphics, statues, memorials, etc.
   - The addition of this mural into the neighborhood context would not alter or diminish the property values within the surrounding neighborhood

5. Literal enforcement of the ordinance would result in unnecessary hardship. Unnecessary hardship means:
   Because of special conditions of the property that distinguish it from other properties in the area:

a. There is no fair and substantial relationship between the general public purpose of the ordinance provision and the specific application of that provision to the property; and

b. The proposed use is a reasonable one.

Alternatively, unnecessary hardship means that, owing to special conditions of the property that distinguish it from other properties in the area, the property cannot be reasonable used in strict conformance with the ordinance.

- Building location is on a main public throughfare having wall frontage facing a bank driveway and parking lot - to the observer/passerby that would be experiencing this mural, the driveway feels and acts as a third street, but the building does not get the benefit of the additional frontage with its sign area tabulations
- The purpose of the mural is too be viewed and be comprehendible from the public way – due to the southwest wall's proximity to Islington Street the proposed mural exceeds the required sign area with the implicit goal of achieving that purpose
- Rate of travel on Islington Street is moderate, and the mural is well off the roadway andtasteful in design and color selection – this creates a situation where a sign that is larger than allowed does not create a hazardous or distracting experience to those that are passing by
- The proposed use is reasonable and fits harmoniously with the surrounding context

III. NEW BUSINESS

A. The request of **Wayne G. Clough (Owner) and Sophary Sar (Applicant),** for property located at **100 Islington Street Unit 6** whereas relief is needed to allow an esthetician business which requires a special exception from Section 10.440, Use # 7.20 where it is permitted by Special Exception. Said property is located on Assessor Map 137 Lot 25-6 and lies within the Character District 4-L2 (CD4-L2) and Historic District. (LU-23-122)

Existing & Proposed Conditions

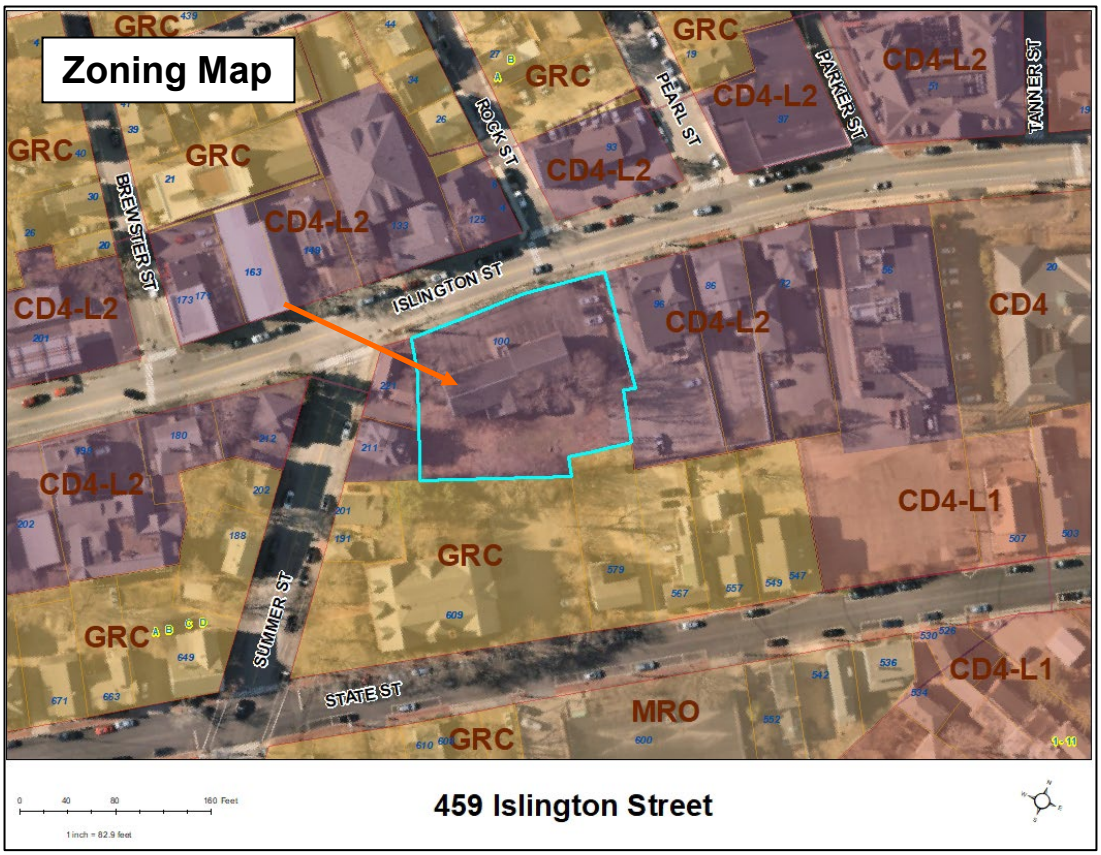
	Existing	Proposed	Permitted / Required
Land Use:	5 Residential Units, 2 Commercial Units	*Esthetician Business (Allowed by Special Exception)	Mixed residential and commercial uses
Unit #6 Area (sq. ft.)	1195	1195	1195
Parking	16	16	10 Spaces for Commercial Uses 5 Spaces for Residential Uses
Estimated Age of Structure:	1984	Special Exception request(s) shown in red.	

- Esthetician Business is considered a “personal services” use that is allowed by Special Exception in the CD4-L2

Other Permits/Approvals Required

- Building Permit (Tenant Fit-Up)

Neighborhood Context



Previous Board of Adjustment Actions

April 29, 1983 – The Board **granted** a Special Exception to allow conversion of an existing building to 5 apartments and 2 retail business uses with the following condition:
1) Site Review was required.

December 6, 1983 – The Board **granted** a Special Exception to permit a 12% reduction in parking spaces for 16 spaces where 18 parking spaces were required and a parking reduction up to 25% was allowed by Special Exception.

April 18, 1995 – The Board **denied** a Special Exception for a 75% reduction in the amount of required parking from 29.43 spaces to 22.07 spaces required by Special Exception.

November 19, 2019 – The Board **denied** the request for the demolition of existing building and construct a 14,582 square foot building with 24 dwelling units that requires the following Variances from Section 10.5A41.10A: a) to allow a building footprint of 14,582 square feet where 2,500 square feet is the maximum allowed; b) to allow a lot area per dwelling unit of 1,015 square feet where 3,000 square feet per dwelling unit is required; and c) to allow a front lot line buildout of 37% where 60% is the minimum required.

Planning Department Comments

The applicant is requesting to establish her esthetician business in Unit #6 at 100 Islington Street. Esthetician businesses are considered a "personal service" under the Zoning Ordinance and are allowed by Special Exception in the CD4-L2 district. There are currently 16 total parking spaces on site 10 of which are designated for commercial units #6 and #7.

Special Exception Review Criteria

The application must meet all of the standards for a **special exception** (see Section 10.232 of the Zoning Ordinance).

1. *Standards as provided by this Ordinance for the particular use permitted by special exception;*
2. *No hazard to the public or adjacent property on account of potential fire, explosion or release of toxic materials;*
3. *No detriment to property values in the vicinity or change in the essential characteristics of any area including residential neighborhoods or business and industrial districts on account of the location or scale of buildings and other structures, parking areas, accessways, odor, smoke, gas, dust, or other pollutant, noise, glare, heat, vibration, or unsightly outdoor storage of equipment, vehicles or other materials;*
4. *No creation of a traffic safety hazard or a substantial increase in the level of traffic congestion in the vicinity;*
5. *No excessive demand on municipal services, including, but not limited to, water, sewer, waste disposal, police and fire protection and schools; and*
6. *No significant increase of stormwater runoff onto adjacent property or streets.*

10.235 Certain Representations Deemed Conditions

Representations made at public hearings or materials submitted to the Board by an applicant for a special exception or variance concerning features of proposed buildings, structures, parking or uses which are subject to regulations pursuant to Subsection 10.232 or 10.233 shall be deemed conditions upon such special exception or variance.

Dear Portsmouth Planning Dept,

I hope this message finds you well. I am excited to inform you that I have found the perfect property to rent for my esthetician business, and it fully meets all the requirements and city ordinances specified in Section 10.232.20 of the Ordinance. The services I will be providing at my business include custom facials, eyelash services, brow services, and facial/body waxing. My goal would be to schedule 3-5 clients per day and my hours of operation are Monday-Friday 10am-6pm and Saturday 10am-4pm. I require two parking spots at this location to make it convenient for my clients. I would like to provide you with a comprehensive narrative, along with photos and a floor plan of the space to support my application for the special exception.

10.232.21 Standards:
The property aligns perfectly with the standards specified in the Ordinance for the particular use permitted by special exception. The space is zoned for commercial use, making it an ideal location for my esthetician business. It is in full compliance with the zoning regulations, and I am committed to adhering to all the applicable rules and guidelines set forth by the city.

10.232.22 Public Safety:
The safety of the public and adjacent properties is of utmost importance to me. The property and the services I will be providing have no potential fire hazard, explosion risk, or release of toxic materials.

10.232.23 Impact on Surrounding Area:
I am conscious of the impact my business can have on the surrounding area and the community. The property's location and my business will have no detriment to property values in the vicinity. Additionally, my esthetician services will not cause any significant disturbances, such as odor, smoke, gas, dust, noise, glare, heat, vibration, or unsightly outdoor storage of equipment, vehicles, or materials.

10.232.24 Traffic Safety and Congestion:
My business will not create any traffic safety hazard or substantially increase traffic congestion. My clients will have ample parking options, and I will encourage appointment-based scheduling to manage the flow of visitors efficiently.

10.232.25 Municipal Services:
I am aware of the importance of not placing excessive demands on municipal services. I ensure that there will be no strain on water, sewer, waste disposal, police, fire protection, or schools. I am committed to minimizing the impact on these essential services.

10.232.26 Stormwater Management:
My services will not create a significant increase in stormwater runoff onto adjacent property or streets.

In conclusion, I am confident that the property I have chosen fully complies with all the special exception standards and city ordinances outlined in the Ordinance. I have attached photos and a floor plan highlighting the layout of the space.

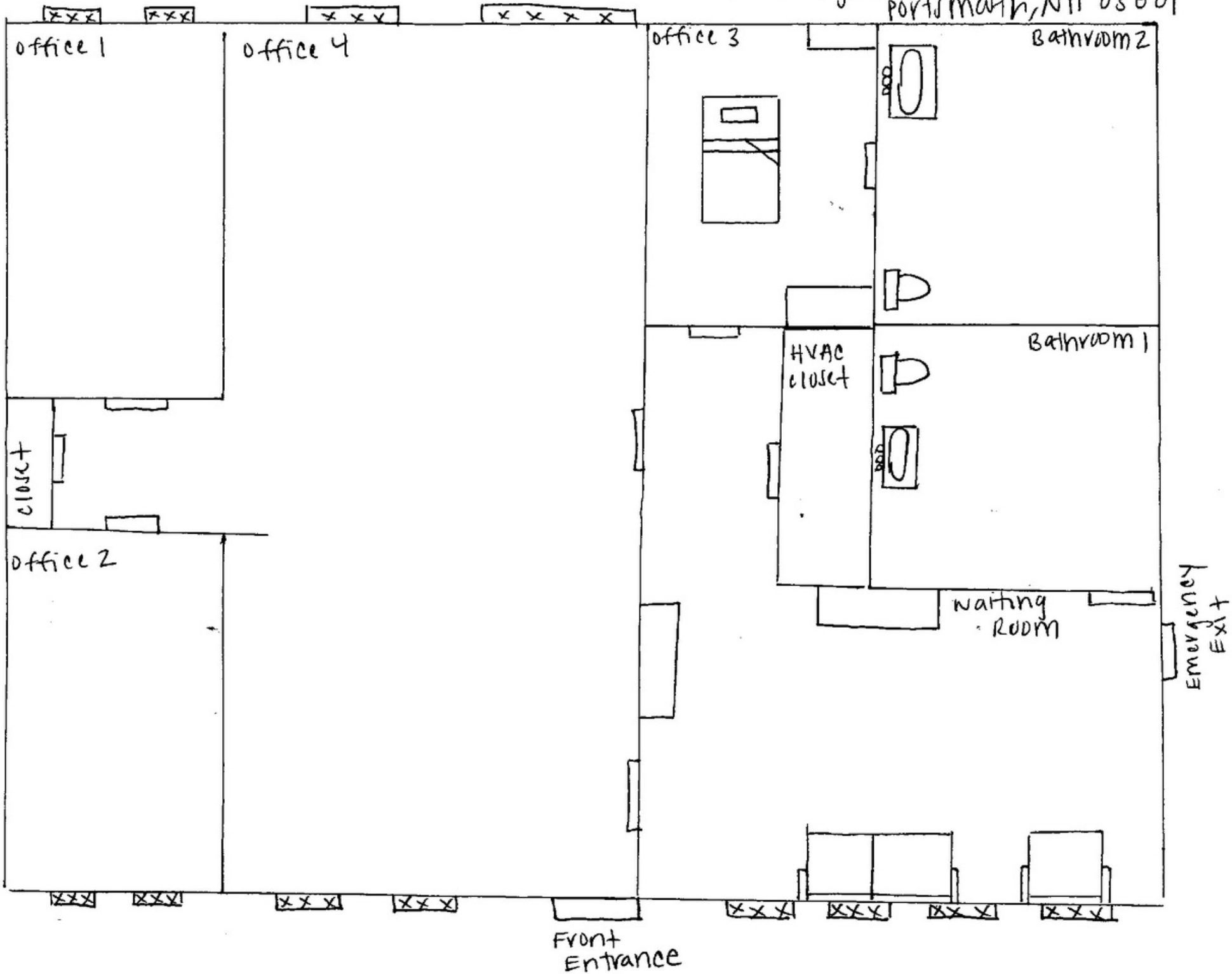
If you have any questions or require additional information, please do not hesitate to reach out to me.

Thank you for your time. I am looking forward to starting my esthetician business at this location.

Best regards,

Sophary Sar

100 Islington St Unit 6
Portsmouth, NH 03801



III. NEW BUSINESS

C. The request of **Davenport Inn LLC (Owner),** for property located at **70 Court Street** whereas relief is needed for the following: 1) An after-the-fact Variance from Section 10.515.14 for six (6) existing permitted mechanical units with a setback of 0.5 feet from the property line; 2) Variance from Section 10.515.14 to install a seventh mechanical unit with a setback of 0.5 feet from the property line whereas 10 feet is required; and, in the alternative; 3) Equitable Waiver from Section 10.515.14 for the installation of six mechanical units with a 0.5 side yard setback. Said property is located on Assessor Map 116 Lot 49 and lies within the Character District 4-L1 (CD4-L1) and Historic District. (LU-22-10)

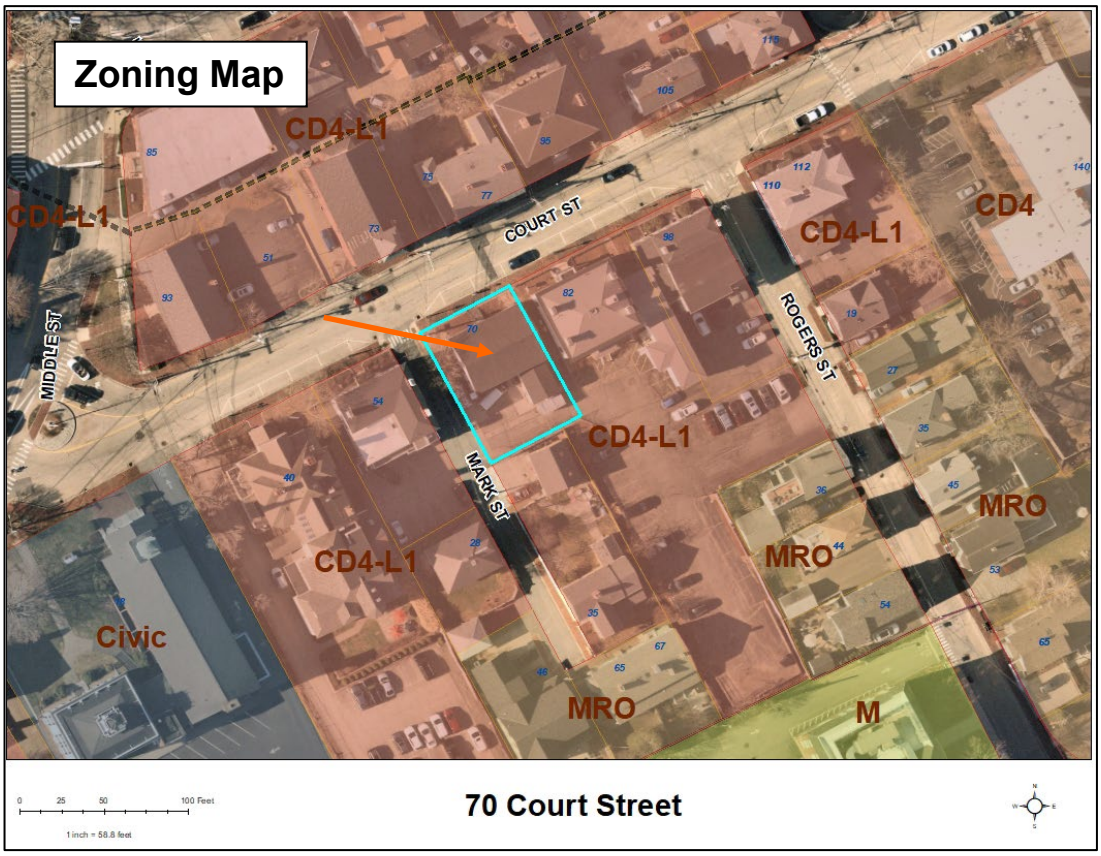
Existing & Proposed Conditions

	Existing	Proposed	Permitted / Required
Land Use:	Inn	Inn	Mixed Uses
Lot area (sq. ft.):	5,238	5,238	3,000 min.
Left Yard (ft.):	**0.5**	**0.5**	10 min.
Parking	5	5	5 (CUP granted for parking)
Estimated Age of Structure:	1758	Variance request(s) shown in red.	

Other Permits/Approvals Required

- Electrical Permit
- Mechanical Permit
- Historic District Commission Review

Neighborhood Context



Previous Board of Adjustment Actions

February 15, 2022 – The Board voted to **grant** the request to convert the building into an 8 room inn with caretaker residence which requires the following: 1) A Variance from Section 10.440 Use #10.30 to allow an Inn where the use is not permitted. 2) A Variance from Section 10.114.21 to allow a 13' maneuvering aisle where 24' is required.

Planning Department Comments

The applicant is requesting an after the fact variance for six mechanical units that have already been installed; and a variance to add a seventh mechanical unit. If the Board finds the variance request does not qualify for approval, the applicant is requesting an equitable waiver of dimensional requirement in the alternative (please see reference to RSA 674:33-a below for more information).

Staff believe it is not the fault of the owner that the first six mechanical units were installed without a variance. Those mechanical units were reviewed by the Historic District Commission and should have been flagged by staff at that time. Staff believe that this was missed due to an internal error.

Staff recommend the Board consider this application as a whole and vote on the two requests separately. Example motions can be found below.

1) To grant the requested after the fact variance for the six mechanical units as presented.
2) To grant the requested variance for the seventh mechanical unit as presented.

Variance Review Criteria

This application must meet all five of the statutory tests for a **variance** (see Section 10.233 of the Zoning Ordinance):

1. *Granting the variance would not be contrary to the public interest.*
2. *Granting the variance would observe the spirit of the Ordinance.*
3. *Granting the variance would do substantial justice.*
4. *Granting the variance would not diminish the values of surrounding properties.*
5. *The "unnecessary hardship" test:*
   (a) The property has special conditions that distinguish it from other properties in the area.
   AND
   (b) Owing to these special conditions, a fair and substantial relationship does not exist between the general public purposes of the Ordinance provision and the specific application of that provision to the property; and the proposed use is a reasonable one.
   OR
   Owing to these special conditions, the property cannot be reasonably used in strict conformance with the Ordinance, and a variance is therefore necessary to enable a reasonable use of it.

Equitable Waiver of Dimensional Requirement (RSA 674:33-a)

I. When a lot or other division of land, or structure thereupon, is discovered to be in violation of a physical layout or dimensional requirement imposed by a zoning ordinance enacted

pursuant to RSA 674:16, the zoning board of adjustment shall, upon application by and with the burden of proof on the property owner, grant an equitable waiver from the requirement, if and only if the board makes all of the following findings:

(a) That the violation was not noticed or discovered by any owner, former owner, owner's agent or representative, or municipal official, until after a structure in violation had been substantially completed, or until after a lot or other division of land in violation had been subdivided by conveyance to a bona fide purchaser for value;

(b) That the violation was not an outcome of ignorance of the law or ordinance, failure to inquire, obfuscation, misrepresentation, or bad faith on the part of any owner, owner's agent or representative, but was instead caused by either a good faith error in measurement or calculation made by an owner or owner's agent, or by an error in ordinance interpretation or applicability made by a municipal official in the process of issuing a permit over which that official had authority;

(c) That the physical or dimensional violation does not constitute a public or private nuisance, nor diminish the value of other property in the area, nor interfere with or adversely affect any present or permissible future uses of any such property; and

(d) That due to the degree of past construction or investment made in ignorance of the facts constituting the violation, the cost of correction so far outweighs any public benefit to be gained, that it would be inequitable to require the violation to be corrected.

II. In lieu of the findings required by the board under subparagraphs I(a) and (b), the owner may demonstrate to the satisfaction of the board that the violation has existed for 10 years or more, and that no enforcement action, including written notice of violation, has been commenced against the violation during that time by the municipality or any person directly affected.

III. Application and hearing procedures for equitable waivers under this section shall be governed by RSA 676:5 through 7. Rehearings and appeals shall be governed by RSA 677:2 through 14.

IV. Waivers shall be granted under this section only from physical layout, mathematical or dimensional requirements, and not from use restrictions. An equitable waiver granted under this section shall not be construed as a nonconforming use, and shall not exempt future use, construction, reconstruction, or additions on the property from full compliance with the ordinance. This section shall not be construed to alter the principle that owners of land are bound by constructive knowledge of all applicable requirements. This section shall not be construed to impose upon municipal officials any duty to guarantee the correctness of plans reviewed by them or property inspected by them.

10.235 Certain Representations Deemed Conditions

Representations made at public hearings or materials submitted to the Board by an applicant for a special exception or variance concerning features of proposed buildings, structures, parking or uses which are subject to regulations pursuant to Subsection 10.232 or 10.233 shall be deemed conditions upon such special exception or variance.

LU-22-10

APPLICATION OF THE DAVENPORT INN, LLC
70 Court Street, Portsmouth, NH
Map 116, Lot 49

APPLICANT'S NARRATIVE

I. THE PROPERTY:

The applicant, The Davenport Inn, LLC, acquired the Nathaniel Treadwell House located 70 Court Street after receiving a variance last year to convert the property into an inn. All necessary approvals from the Planning Board and the Historic District were obtained for that purpose. A copy of this Board's decision in February of 2022 is submitted herewith. As the Board may recall, the applicant received approval to convert the existing building to an inn, with eight units and an onsite caretaker's residence.

Renovations, upgrades and improvements to the property have been proceeding since February of last year and the inn is slated to open to the public on or about September 1.

During the course of the renovations, the applicant determined that it was necessary and desirable to replace the existing condenser unit on the east side of the building, as shown on the existing conditions plan submitted herewith, with a bank of newer, more efficient mini-split condenser units in the similar location. HDC approval for six units was obtained in March of this year, and a copy of the approval is submitted herewith.

After receiving the administrative approval from the HDC for the new condensers, which are within the general site of the prior condenser, the applicant's installer informed it that a seventh unit would be necessary to properly service the building, and the applicant submitted again to the HDC for an administrative approval therefor in June. It was then, subsequent to the installation of the units, the applicant was informed that they resided within the side yard setback and a variance would be necessary for the seventh unit. As the property is in the CD4-L1 District, the side yard minimum is 5 feet. However, in consultation with Planning Department staff, it was determined that relief from the 10 foot setback required under Section 10.515.14 should be requested.

Section 10.515.14 specifically contemplates siting mechanical units within setbacks. The neighboring law office has its own condenser units within ten feet of this line as well. There is no realistic use the corridor between the two buildings, which is 12 feet wide in total, could be put to beyond housing mechanical units in this location.

Compliance with the ten foot requirement would require relocated the units to the rear of the building where they would be visible and unsightly to patrons visiting a historic inn.

The applicant is seeking variance relief for all seven units. Because the first six units were installed in reliance on the HDC approval in March, the applicant is alternatively seeking an equitable waiver for those units in the event the variance is denied.

As the Board is aware from last year's application, the Treadwell House has a most colorful history. Originally built in 1758 by the late Charles and Mary Treadwell, it has at various times served as an inn or rooming house, originally at the corner of Fleet and State Streets. It operated as The Davenport Inn for a number of years. It then served as Governor Bradstreet Gilman's headquarters during the War of 1812. It was an inn used primarily by attorneys practicing at the Portsmouth Courthouse during the mid 1800's. It was the home of the Portsmouth YWCA during the mid-twentieth century. Faced with its demolition to make way for what is now the TD Bank on State Street, it was saved and painstakingly moved to its current location in the 1950s.

The property boasts several significant and unique architectural features. Features such as moldings, stairwells, spindles, and pendants that in other historic buildings have been lost forever due to significant fires in Portsmouth's history, neighborhood destruction of the 70's, and today's development are present on this property. The applicant has painstakingly restored and renovated the property at enormous expense to facilitate its next life as an inn of the highest quality for visitors to Portsmouth. The inclusion of modern, efficient HVAC systems is necessary for today's travelers.

II. **THE VARIANCE**:

The Applicant believes all criteria necessary to grant the requested variance is met.

Granting the requested variances will not be contrary to the spirit and intent of the ordinance nor will it be contrary to the public interest. The "public interest" and "spirit and intent" requirements are considered together pursuant to Malachy Glen Associates v. Chichester, 152 NH 102 (2007). The test for whether or not granting a variance would be contrary to the public interest or contrary to the spirit and intent of the ordinance is whether or not the variance being granted would substantially alter the characteristics of the neighborhood or threaten the health, safety and welfare of the public.

The essential characteristics of the neighborhood would not be altered by this variance. There is a varied mixture of municipal, commercial and residential development in the immediate vicinity, including single and multi-family dwellings, The

Hotel Portsmouth (formerly the Sise Inn), other inns, public housing, retail, law offices, the Middle School, fire station, business and professional offices.

The corridor between the buildings has been the site for HVAC units servicing each for several years and is not suitable space for any other significant use. Were the variance to be granted, there would be no change in the essential characteristics of the neighborhood, nor would any public health, safety or welfare be threatened. The siting and configuration of the units on the applicant's property has been approved by the HDC, further assuring the public interest is maintained.

Substantial justice would be done by granting the variance. Whether or not substantial justice will be done by granting a variance requires the Board to conduct a balancing test. If the hardship upon the owner/applicant outweighs any benefit to the general public in denying the variance, then substantial justice would be done by granting the variance. It is substantially just to allow a property owner the reasonable use of his or her property.

In this case, there is no benefit to the public in denying the variance that is not grossly outweighed by the hardship upon the owner. The corridor between the buildings has been the site for HVAC units servicing each for several years and is not suitable space for any other significant use. The siting and configuration of the first six units on the applicant's property has been approved by the HDC, further assuring the public interest is maintained. There is no other reasonable location for the units on the property.

There are special conditions associated with the property which prevent the proper enjoyment of the property under the strict terms of the zoning ordinance and thus constitute unnecessary hardship. The property boasts a unique history and architecture that render it particularly well suited for a place of public accommodation, as it was for decades. The proposed inn will assure that this part of historic Portsmouth will be preserved for visitors and the public to experience and enjoy. The 12 foot corridor between buildings is not suitable for any significant use beyond what is proposed here.

The use is a reasonable use. The use of this property as an inn has been approved by this Board. Amenities such as safe and efficient HVAC systems are expected by modern travelers and are a reasonable use of the affected portion of the property.

There is no fair and substantial relationship between the purpose of the ordinance as it is applied to this particular property. Rigid application of the side yard setback in this instance would do nothing to promote purposes of the ordinance as the location has been the site of mechanical units servicing both buildings for many years and the area is not useful for any other significant purpose.

Accordingly, the proposed use requested here would not in any way frustrate the purpose of the ordinance and there is no fair and substantial relationship between the purpose of the ordinance and its application to this property.

III. THE EQUITABLE WAIVER

As noted above, the applicant installed the first six units after receiving HDC administrative approval therefor in March of this year. It was only when the applicant sought administrative approval for the seventh unit from the HDC was the applicant informed that the side yard setback variance was necessary.

Accordingly, should the variance be denied for any reason, the applicant is alternatively seeking an equitable waiver of the setback requirement for the first six units that were installed in reliance on the original HDC approval.

This Board is authorized to grant an equitable waiver of dimensional requirements pursuant to RSA 674:33-a. The applicant maintains all the criteria imposed by the statute apply to this matter.

a) The setback violation was not noticed or discovered by the owner or city staff until after the six units were installed. RSA 674:33-a, I (a);

b) The violation is not the result of ignorance, failure to inquire, obfuscation, misrepresentation, or bad faith on the part of the applicant, but is instead the result of an error in ordinance interpretation or applicability by the municipal official in issuing the permit for the six units. RSA 674:33-a, I (b);

c) The setback violation does not constitute a public or private nuisance, nor diminish values of surrounding properties nor interfere with or adversely affect any present or permissible future use of such properties. RSA 674:33-a, I (c);

d) Due to the degree of past construction and investment made in reliance on the HDC approval, the cost of correction far outweighs any public benefit to be gained, such that it would be inequitable to require the setback to be corrected. RSA 674:33-a, I (d).

IV. Conclusion.

For the foregoing reasons, the applicant respectfully requests the Board grant the variance as requested and advertised. In the event the variance is denied for any reason, the applicant alternatively requests an equitable waiver as to the first six units installed in reliance on the HDC's March 2023 approval.

Respectfully submitted,

Dated: September 6, 2023 By: *Christopher P. Mulligan*
Christopher P. Mulligan, Esquire

CITY OF PORTSMOUTH

Planning Department
1 Junkins Avenue
Portsmouth, New
Hampshire 03801
(603) 610-7216

ZONING BOARD OF ADJUSTMENT

February 16, 2022

Treadwell House INC
82 Court Street
Portsmouth, NH 03801

RE: **Board of Adjustment request for property located at 70 Court Street**

Dear Owners:

The Zoning Board of Adjustment, at its regularly scheduled meeting of **Tuesday, February 15, 2022**, considered your application for the conversion of the building into an 8 room inn with caretaker residence which requires the following: 1) A Variance from Section 10.440 Use #10.30 to allow an Inn where the use is not permitted. 2) A Variance from Section 10.114.21 to allow a 13' maneuvering aisle where 24' is required. Said property is shown on Assessor Map 116 Lot 49 and lies within the Character District 4-L1 (CD4-L1). As a result of said consideration, the Board voted to **grant** the request as presented and advertised.

The Board's decision may be appealed up to thirty (30) days after the vote. Any action taken by the applicant pursuant to the Board's decision during this appeal period shall be at the applicant's risk. Please contact the Planning Department for more details about the appeals process.

Approvals may also be required from other City Commissions or Boards. Once all required approvals have been received, applicant is responsible for applying for and securing a building permit from the Inspection Department prior to starting any project work.

This approval shall expire unless a building permit is issued within a period of two (2) years from the date granted unless an extension is granted in accordance with Section 10.236 of the Zoning Ordinance.

The minutes and audio recording of this meeting are available by contacting the Planning Department.

Very truly yours,

Jim Lee

Jim Lee, Vice Chairman of the Zoning Board of Adjustment

cc: Shanti Wolph, Chief Building Inspector

Rosann Maurice-Lentz, City Assessor

John K. Bosen, Esquire
Erik Saari, Altus Engineering

CITY OF PORTSMOUTH

Planning Department
1 Junkins Avenue
Portsmouth, New
Hampshire 03801

(603) 610-7216

HISTORIC DISTRICT COMMISSION

March 8, 2023

Davenport Inn, LLC
266 Middle Street
Portsmouth, NH 03801

RE: **Administrative Approval for property located at 70 Court Street (LUHD-567)**

Dear Owner:

The Historic District Commission, at its regularly scheduled meeting of **Wednesday, March 01, 2023**, considered your request for administrative approval for the installation of HVAC equipment (6) condensers. As a result of said consideration, the Commission voted to **grant** the Administrative Approval with the following stipulations:

1. The six proposed units shall be placed horizontally behind the second window from Court Street, toward the rear of the building.
2. Landscaping shall be added in front of the frist unit.

The minutes and audio recording of this meeting are available by contacting the Planning Department.

Very truly yours,

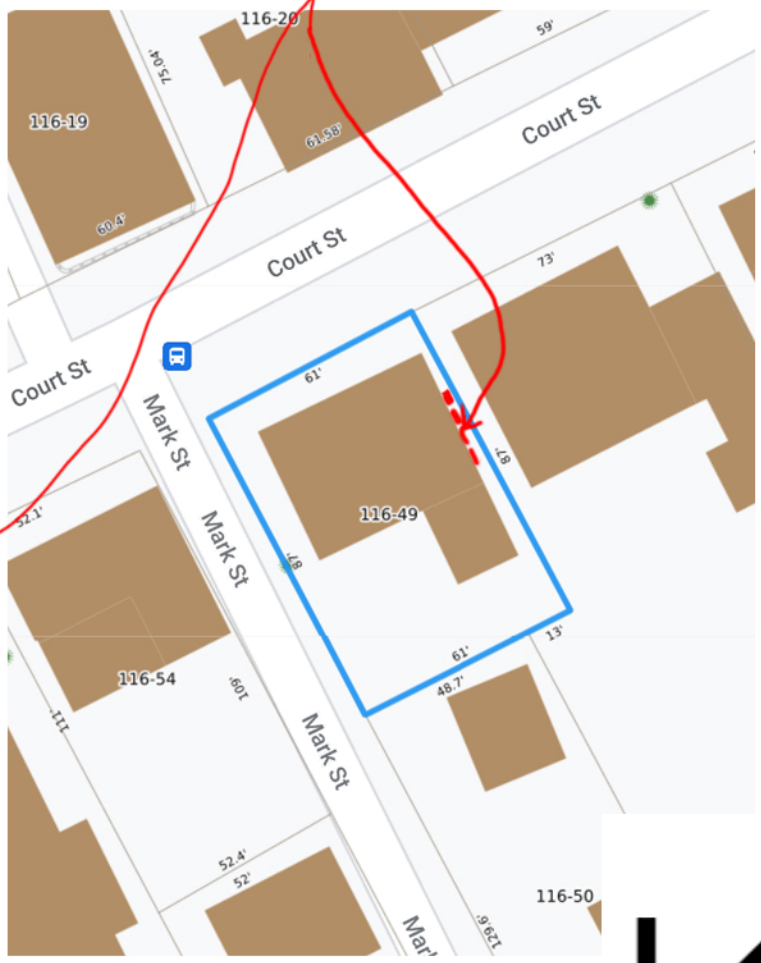
Nicholas J. Cracknell, AICP, Principal Planner
for Jonathan Wyckoff, Chairman of the Historic District Commission

cc:

Sarah Hourihane, Applicant

VIEW FROM COURT STREET

6 NEW CONDENSERS WERE PREVIOUSLY APPROVED TO BE LOCATED IN LOCATION OF EXISTING CONDENSER.
WE ARE REQUESTING APPROVAL FOR A 7TH CONDENSER THAT WOULD GO IN LINE WITH THE OTHERS AGAINST THE BUILDING.



THE DAVENPORT

70 COURT STREET

JULY 2023

LASSEL ARCHITECTS

VIEW FROM COURT STREET

CONDENSER:
HDC previously approved 6 condensers to be located on the side of the building. We would like to request 1 additional condenser to be located on the parking lot side of the approved stacks for a total of 7 condensers.

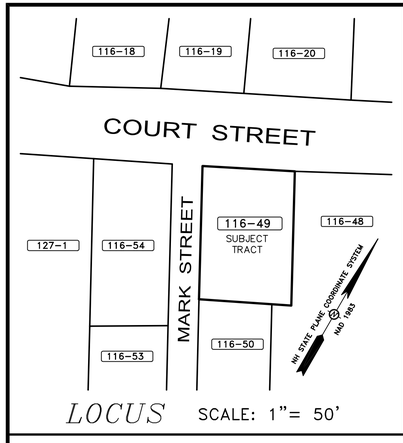
Condensers are located as far back from Court Street as possible.

VIEW BETWEEN BUILDINGS AT CONDENSER LOCATION

Landscaping will be installed to buffer the condensers from Court Street.

THE DAVENPORT
70 COURT STREET
JULY 2023

LASSEL ARCHITECTS

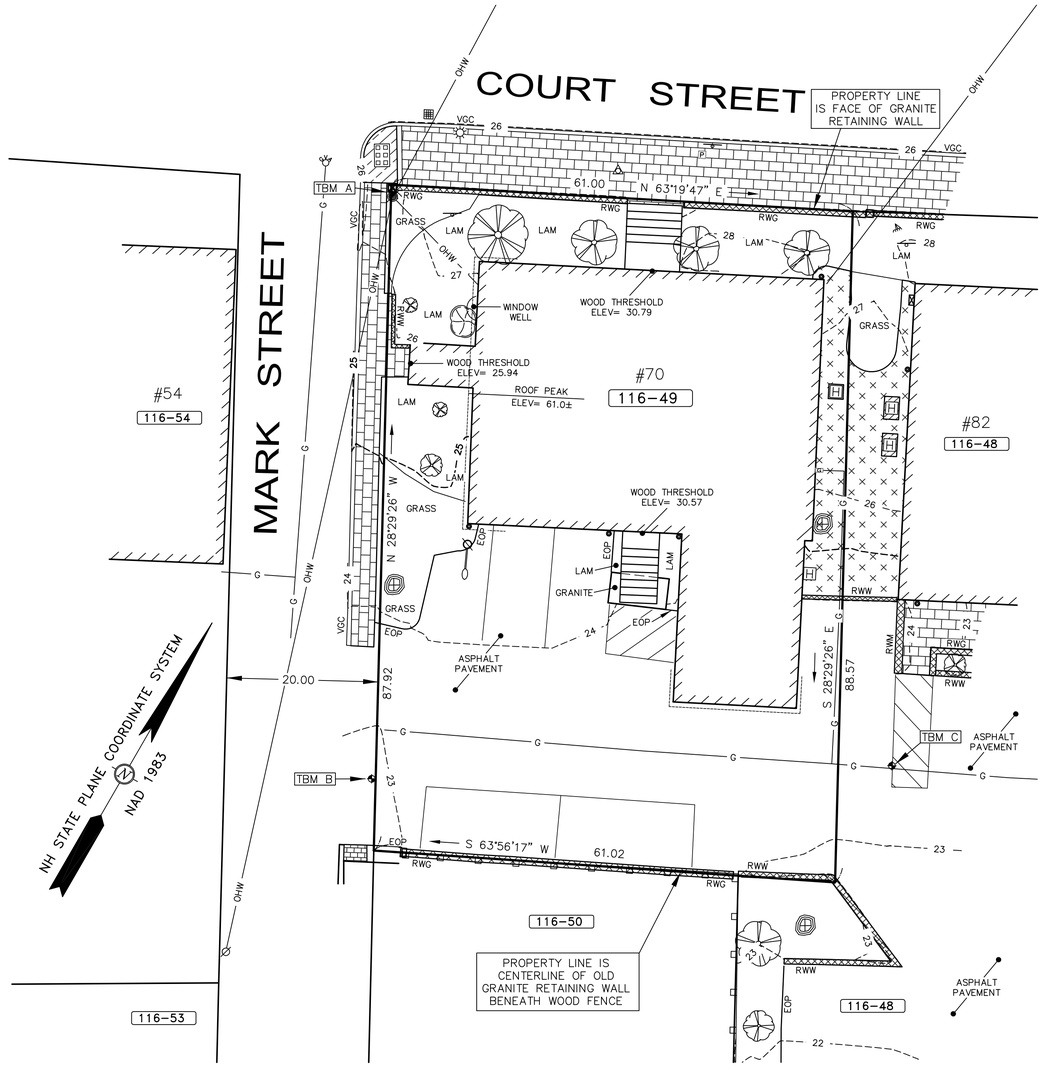


LOCUS SCALE: 1"= 50'

LEGEND:

- ⚠ ..... SURVEY NAIL SET
- ..... WOOD FENCE
- PSNH ..... PUBLIC SERVICE CO. OF NH
- 110-5 ..... TAX SHEET – LOT NUMBER
- RCRD ..... ROCKINGHAM COUNTY REGISTRY OF DEEDS
- EOP ..... EDGE OF PAVEMENT
- VGC ..... VERTICAL FACED GRANITE CURB
- RWM ..... MORTARED RETAINING WALL
- RWW ..... WOOD RETAINING WALL
- RWG ..... GRANITE RETAINING WALL
- P ..... PARK METER KIOSK
- ..... SIGN
- ⌀ ..... UTILITY POLE
- ⌀ ..... UTILITY POLE W/TRANSFORMER
- ☼ ..... LIGHT POLE
- ..... UTILITY POLE WITH ARM & LIGHT
- ..... DIRECTED LIGHT
- GM ..... GAS METER
- ..... GAS VALVE
- ..... CATCH BASIN
- ..... ROOF DOWNSPOUT
- ..... DECIDUOUS TREE
- ..... DECIDUOUS SHRUB
- OHW ..... OVERHEAD WIRES
- ..... CEMENT CONCRETE
- ..... BRICK PAVERS
- ..... CRUSHED STONE
- ..... RETAINING WALL
- LAM ..... MULCH LANDSCAPED AREA
- ×12.5 ..... SPOT GRADE
- ..... STUMP FOUND

TBM	DESCRIPTION	ELEV.
A	SURVEY NAIL FOUND IN UTILITY POLE PSNH 4 22 A (1.35' ABOVE GROUND)	27.98
B	SURVEY NAIL SET IN ASPHALT	22.84
C	SURVEY NAIL SET IN ASPHALT	23.41



10 0 10 20 30 40 FEET

5 0 5 10 METERS

NOTES:

1. OWNER OF RECORD..... TREADWELL HOUSE, INC. C/O CHARLES DOLEAC, ESQ.
   ADDRESS..... 82 COURT ST, PORTSMOUTH, NH 03801
   DEED REFERENCE..... 2357/1111
   TAX SHEET / LOT..... 116-49
   PARCEL AREA ..... 5,380 S.F.
2. SUBJECT TRACT IS ZONED MRB, HD & CD4-L1. SEE CITY OF PORTSMOUTH ZONING ORDINANCE.
3. THE RELATIVE ERROR OF CLOSURE WAS LESS THAN 1 FOOT IN 15,000 FEET.
4. THE LOCATION OF ALL UNDERGROUND UTILITIES SHOWN HEREON ARE APPROXIMATE AND ARE BASED UPON THE FIELD LOCATION OF ALL VISIBLE STRUCTURES (IE CATCH BASINS, MANHOLES, WATER GATES ETC.) AND INFORMATION COMPILED FROM PLANS PROVIDED BY UTILITY COMPANIES AND GOVERNMENTAL AGENCIES. ALL CONTRACTORS SHOULD NOTIFY, IN WRITING, SAID AGENCIES PRIOR TO ANY EXCAVATION WORK AND CALL DIG-SAFE @ 1-888-DIG-SAFE.
5. ON SITE CONTROL ESTABLISHED USING SURVEY GRADE GPS UNITS.
   HORIZONTAL DATUM: NAD 1983 (2011)(EPOCH 2010.0000)
   VERTICAL DATUM: NAVD 1988
   PRIMARY BM: CITY CONTROL POINT "ROBE"
6. CONTRACTOR TO VERIFY SITE BENCHMARKS BY LEVELING BETWEEN 2 BENCHMARKS PRIOR TO THE SETTING OR ESTABLISHMENT OF ANY GRADES/ELEVATIONS. DISCREPANCIES ARE TO BE REPORTED TO JAMES VERRA AND ASSOC., INC.
7. PARCEL 116-49 IS SUBJECT TO A ROW FOR ALL PURPOSES IN FAVOR OF PARCEL 116-48. SEE RCRD BK 2357, PAGE 1111.

REFERENCE PLANS:

1. PLAN OF WILLIAM P. JONES HOMESTEAD, UNDATED, RCRD PLAN 0099.

ABUTTERS LIST

MAP-LOT	OWNER OF RECORD	DEED REF.
119-19	UNITARIAN-UNIVERSALIST CHURCH OF PORTSMOUTH N.H. 73 COURT ST, PORTSMOUTH, NH 03801	N/A
116-20	CITY LIGHTS, LLC PO BOX 1389, PORTSMOUTH, NH 03802-1389	N/A
116-48	82 COURT ST, LLC 82 COURT ST, PORTSMOUTH, NH 03801	5357/2696
116-50	KATIE C. JENKINS & JASON R. JENKINS 35 MARK ST, PORTSMOUTH, NH 03801	4821/202
116-53	BERNARD A. COHEN 28 MARK ST, PORTSMOUTH, NH 03801	2877/2906
116-54	IRENE R. LEBEL REV. TRUST OF 2014 C/O FRANCES D. LEBEL & THOMAS L. LEBEL 457 BROAD ST, PORTSMOUTH, NH 03801	5514/736

SURVEYOR:
James Verra and Associates, Inc.
LAND SURVEYORS
101 SHATTUCK WAY – SUITE 8
NEWINGTON, N.H. 03801– 7876
603-436-3557
JOB NO: 23985
JOB NO: 23985

ENGINEER:
ALTUS ENGINEERING, INC.
133 COURT STREET PORTSMOUTH, NH 03801
(603) 433-2335 www.ALTUS-ENG.com

ISSUED FOR:
ENGINEERING DESIGN

ISSUE DATE:
JANUARY 18, 2022

REVISIONS

NO.	DESCRIPTION	BY	DATE
1	ENGINEERING DESIGN	JV	1/18/22

DRAWN BY: JCS
APPROVED BY: JV
DRAWING FILE: 23985.DWG

SCALE:
22" x 34" – 1" = 10'
11" x 17" – 1" = 20'

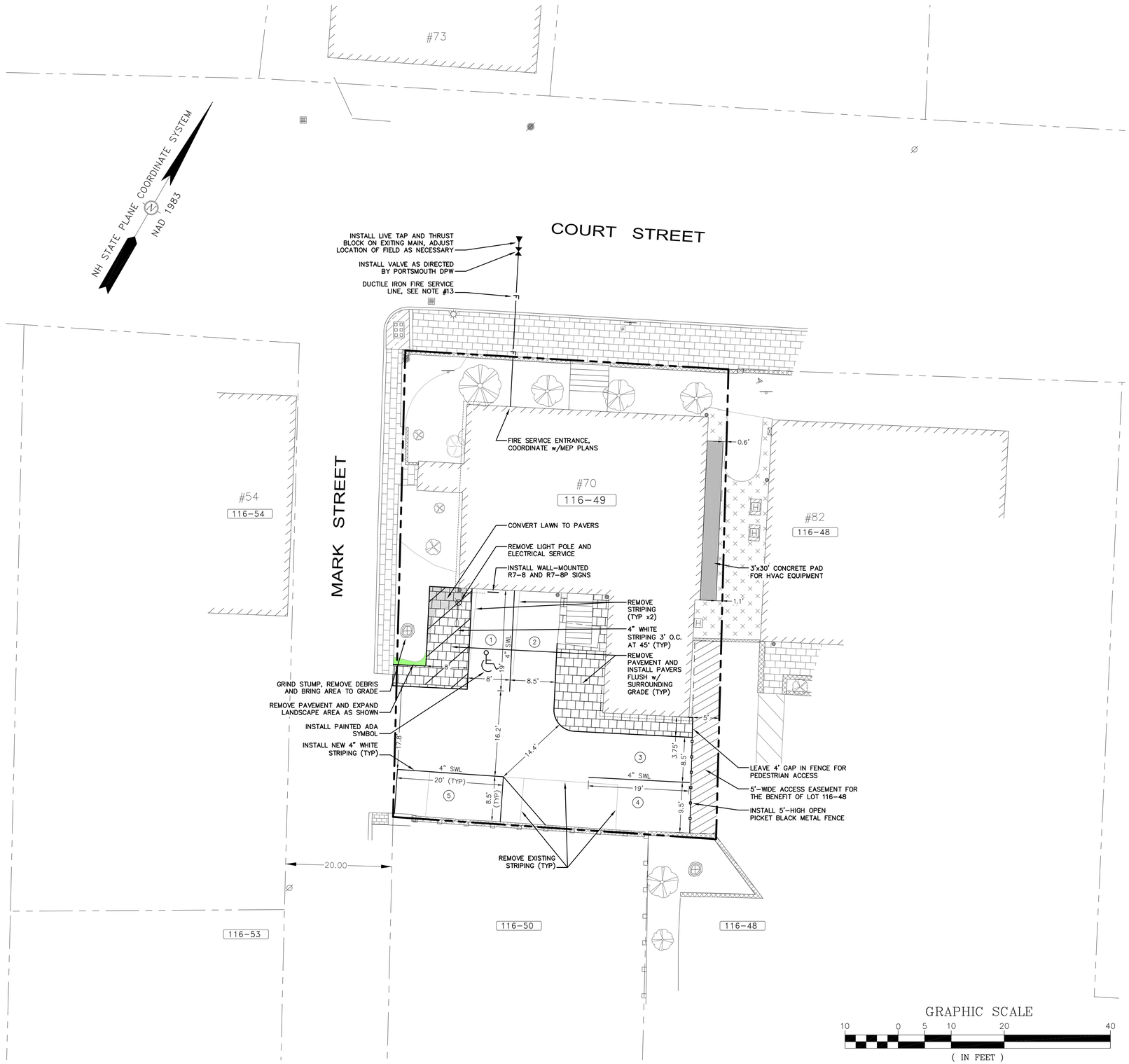
OWNER/APPLICANT:
TREADWELL HOUSE, INC.
C/O CHARLES DOLEAC, ESQ.
82 COURT STREET
PORTSMOUTH, NH 03801
ASSESSOR'S PARCEL 116-49

PROJECT:
PROPOSED SITE DEVELOPMENT PLANS
70 COURT STREET
& MARK STREET
PORTSMOUTH, N.H.
ASSESSOR'S PARCEL
116-49

TITLE:
EXISTING CONDITIONS PLAN

SHEET NUMBER:
1 OF 1

P5301



GRAPHIC SCALE

10 0 5 10 20 40

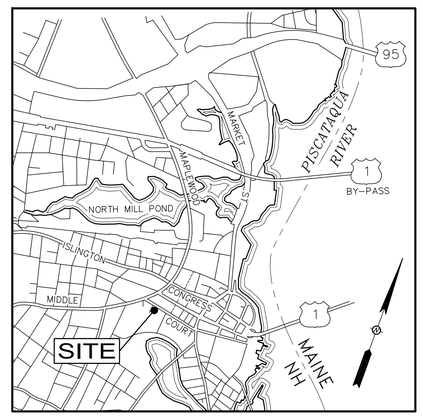
(IN FEET)

SITE NOTES

1. DESIGN INTENT – THIS PLAN SET IS INTENDED TO DEPICT THE RENOVATION OF THE SITE TO AN INN.
2. APPROXIMATE LOT AREA: ±5,380 S.F. (±0.12 AC.)
3. ZONE: CHARACTER DISTRICT 4–L1 (CD4–L1)
   HISTORIC DISTRICT OVERLAY (HD)
4. DIMENSIONAL REQUIREMENTS – BUSINESS:

MIN. LOT AREA:	3,000 S.F.
MIN. STREET FRONTAGE:	150'
FRONT SETBACK:	15'
SECONDARY FRONT YARD:	12'
SIDE SETBACK:	5' MIN. TO 20' MAX.
REAR SETBACK:	5'
FRONT LOT LINE BUILDOUT:	60% MIN. TO 80% MAX.
MAX. BUILDING HEIGHT:	35' (2 STORIES, SHORT 3RD)
MAX. BLDG. COVERAGE:	60%
MINIMUM OPEN SPACE:	25% (23.3% EXISTING, 26.1% PROPOSED)

4. PARKING REQUIREMENTS:
   INN, HOTEL, MOTEL: 1.25/ROOM
   8 ROOMS x 1.25 = 10 SPACES
   CARETAKERS RESIDENCE <500 S.F.: 0.5/UNIT
   1 CARETAKER x .5 = 0.5 SPACES
   TOTAL PARKING REQUIRED = 11 SPACES
   TOTAL PARKING PROVIDED = 5 SPACES (6 SPACE DEFICIT)
5. VARIANCE FROM SECTION 10.440.10.30 TO ALLOW AN INN IN THE CD4–L1 ZONE GRANTED FEBRUARY 15, 2022.
6. VARIANCE FROM SECTION 10.1114.21 REQUIRED FOR REDUCED MANEUVERING AISLE WIDTH GRANTED FEBRUARY 15, 2022.
7. CONDITIONAL USE PERMIT UNDER SECTION 10.1112.14 REQUIRED TO ALLOW A REDUCTION IN THE REQUIRED NUMBER OF PARKING SPACES.
8. PAVEMENT MARKINGS SHALL BE CONSTRUCTED USING WHITE, YELLOW OR BLUE TRAFFIC PAINT (WHERE SPECIFIED) MEETING THE REQUIREMENTS OF AASHTO M248, TYPE F OR EQUAL. PAINTED ISLANDS AND LOADING ZONES SHALL BE 4"–WIDE DIAGONAL WHITE LINES 3'–0" O.C. BORDERED BY 4"–WIDE WHITE LINES. PARKING STALLS SHALL BE SEPARATED BY 4"–WIDE WHITE LINES. SEE DETAILS FOR HANDICAP SYMBOLS, SIGNS AND SIGN DETAILS.
9. PAVEMENT MARKINGS AND SIGNS SHALL CONFORM TO THE REQUIREMENTS OF THE "MANUAL ON UNIFORM TRAFFIC DEVICES," "STANDARD ALPHABETS FOR HIGHWAY SIGNS AND PAVEMENT MARKINGS" AND THE AMERICANS WITH DISABILITIES ACT (ADA), LATEST EDITIONS.
10. ALL CONSTRUCTION SHALL MEET THE MINIMUM STANDARDS OF THE CITY OF PORTSMOUTH & NHDOT'S STANDARD SPECIFICATION FOR ROAD & BRIDGE CONSTRUCTION, LATEST EDITIONS. THE MORE STRINGENT SPECIFICATION SHALL GOVERN.
11. ALL NEW PAVER SURFACES SHALL BE INSTALLED SO AS TO BE ADA–COMPLIANT.
12. ALL BONDS AND FEES SHALL BE PAID/POSTED PRIOR TO INITIATING CONSTRUCTION.
13. COORDINATE FINAL SIZE AND LOCATION OF FIRE SERVICE LINE WITH MEP PLANS.



LOCUS MAP NOT TO SCALE

ALTUS ENGINEERING, INC.
133 Court Street Portsmouth, NH 03801
(603) 433-2335 www.altus-eng.com

NOT FOR CONSTRUCTION

ISSUED FOR: ZONING BOARD

ISSUE DATE: AUGUST 25, 2023

REVISIONS

NO.	DESCRIPTION	BY	DATE
0	ZBA	EBS	01/25/22
1	TAC	EBS	02/15/22
2	TAC	EBS	02/23/22
3	REVISED ADA PARKING	EBS	02/28/22
4	REVISED PER TAC WS	EBS	03/09/22
5	REVISED EASEMENT	EBS	03/14/22
6	ADDED HVAC PAD	EBS	08/25/23

DRAWN BY: EBS
APPROVED BY: EBS
DRAWING FILE: 5301–SITE.dwg

SCALE:
22" x 34" – 1" = 10'
11" x 17" – 1" = 20'

OWNER:
TREADWELL HOUSE, INC.
c/o CHARLES DOLEAC, ESQ.
82 COURT STREET
PORTSMOUTH, NH 03801

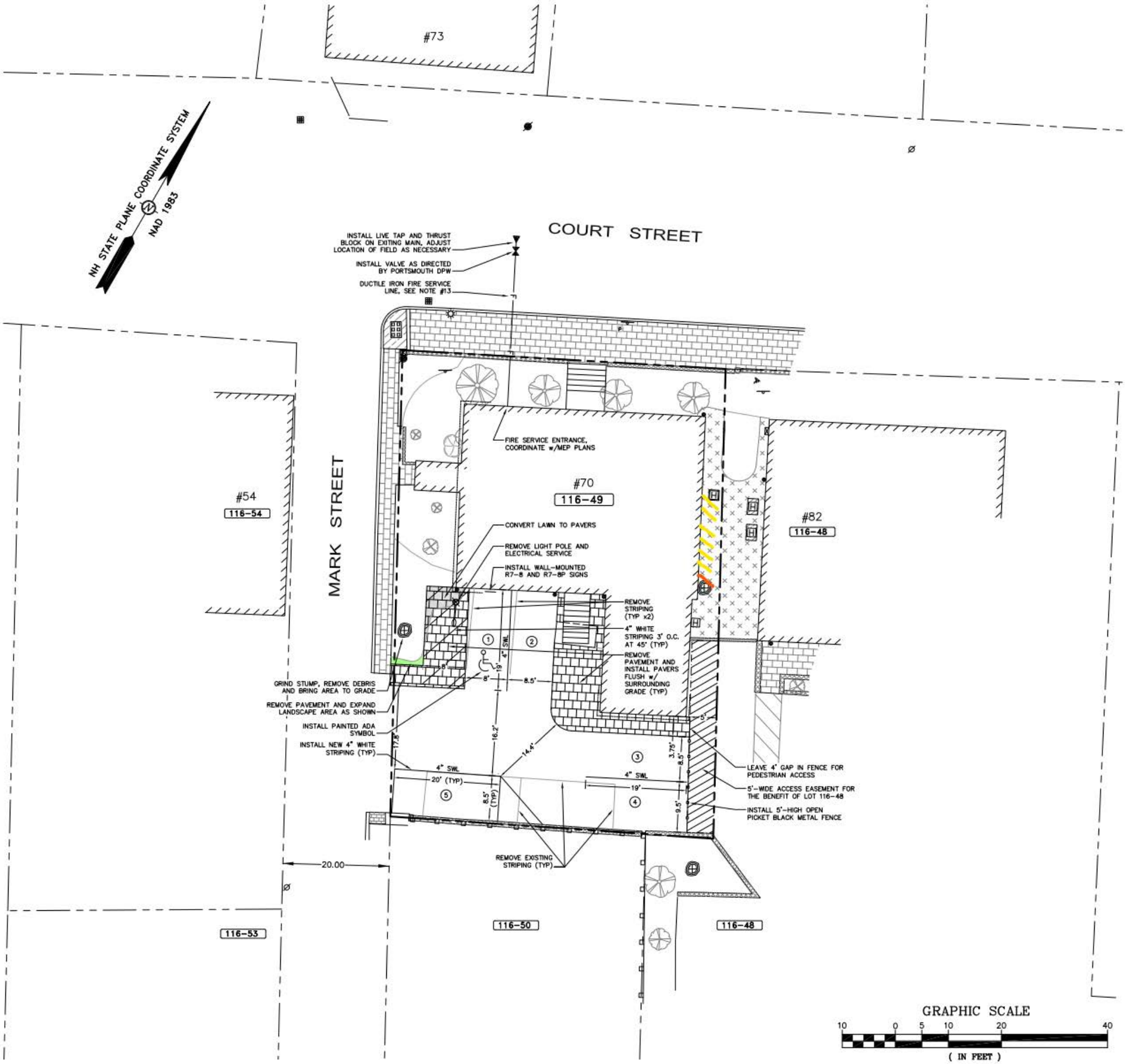
APPLICANT:
DAVENPORT, LLC
c/o 266 MIDDLE STREET
PORTSMOUTH, NH 03801

PROJECT:
DAVENPORT INN
TAX MAP 116, LOT 49
70 COURT STREET
PORTSMOUTH, NH

TITLE:
SITE PLAN

SHEET NUMBER:
C - 1

P5301


#73
NH STATE PLANE COORDINATE SYSTEM
NAD 1983
COURT STREET
INSTALL LIVE TAP AND THRUST BLOCK ON EXITING MAIN, ADJUST LOCATION OF FIELD AS NECESSARY
INSTALL VALVE AS DIRECTED BY PORTSMOUTH DPW
DUCTILE IRON FIRE SERVICE LINE, SEE NOTE #13
FIRE SERVICE ENTRANCE, COORDINATE w/MEP PLANS
MARK STREET
#54
116-54
#70
116-49
#82
116-48
CONVERT LAWN TO PAVERS
REMOVE LIGHT POLE AND ELECTRICAL SERVICE
INSTALL WALL-MOUNTED R7-8 AND R7-8P SIGNS
REMOVE STRIPING (TYP x2)
4" WHITE STRIPING 3' O.C. AT 45° (TYP)
REMOVE PAVEMENT AND INSTALL PAVERS FLUSH w/ SURROUNDING GRADE (TYP)
GRIND STUMP, REMOVE DEBRIS AND BRING AREA TO GRADE
REMOVE PAVEMENT AND EXPAND LANDSCAPE AREA AS SHOWN
INSTALL PAINTED ADA SYMBOL
INSTALL NEW 4" WHITE STRIPING (TYP)
4" SWL
20' (TYP)
19'
8.5' (TYP)
LEAVE 4' GAP IN FENCE FOR PEDESTRIAN ACCESS
5'-WIDE ACCESS EASEMENT FOR THE BENEFIT OF LOT 116-48
INSTALL 5'-HIGH OPEN PICKET BLACK METAL FENCE
REMOVE EXISTING STRIPING (TYP)
20.00
116-53
116-50
116-48
GRAPHIC SCALE
10 0 5 10 20 40
(IN FEET)